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PROCEEDINGS

MISSISSIPPI STATE BAR

FIFTY-THIRD ANNUAL MEETING

October, 1958

VOLUME XXIX **NUMBER 5**

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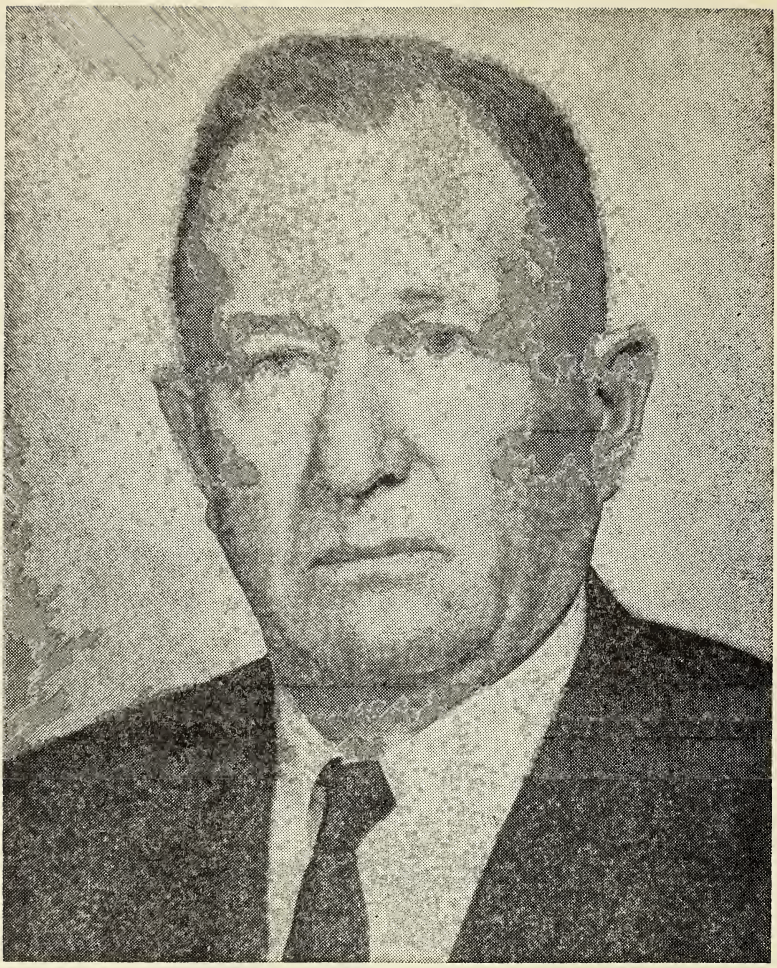

W. S. HENLEY

Retiring President of Mississippi State Bar

PROCEEDINGS OF THE FIFTY-THIRD ANNUAL MEETING

OF THE

Mississippi State Bar

Held at Biloxi, Mississippi, on the

30th and 31st of May, 1958

The convention was called to order in the Buena Vista Hotel in Biloxi, Mississippi, at 9:30 A. M., May 30, 1958, by Mr. W. S. Henley, President of the Mississippi State Bar.

The invocation was delivered by Dr. Clyde C. Gunn of Gulfport.

An address of welcome was delivered by Mr. David Cottrell, Jr., of Gulfport, and was responded to by Mr. N. W. Sweat of Corinth.

President Henley then delivered the following address:

THE COMMON LAW – OUR HERITAGE

*W. S. Henley**

Blackstone says:

> "Law may be divided, according to its source, into two kinds: the lex non scripta, the unwritten or common law; and lex scripta, the written or statute law."

The earliest record we have of a written law in England is that prescribed by King Ethelbert about 600 A. D. The first Acts of Parliament were enacted in the Twelfth Century.

The common law is of a much earlier origin. Legal history teaches us that long before our ancestors could read or write, primitive tribes administered justice based upon tribal customs and communicated their laws from one generation to the next by word of mouth.

Many of the customs upon which our laws are based are of such ancient origin that it is utterly impossible to establish when or how they came into existence. For instance, in England the crime of murder has never been defined by statute. Prosecutions for murder are based upon customs established in ancient times by tribal rule. In America many crimes are not defined by statute and depend upon ancient customs. English history indicates that the customs that are the basis of our laws came from many sources. We trace our ancestry not only to the Britons, Angles and Saxons, but also to the Danes, Norse and Normans. Lord Bacon said: "The common law . . . is as mixed as the

*President of the Mississippi State Bar, Hazlehurst, Mississippi.

English language." The very word "law" is not of Saxon but Norse origin.

From the earliest times it was the duty of the judge to ascertain the law or custom and apply it to the case before him. As civilization progressed and new customs were established, the courts applied the same. Wherever no custom had been established it was the duty of the court to apply existing customs by analogy.

The customs in various communities were different. However, as the King's Courts gradually superseded the local courts, customs were recognized that were common to all England—and thus the "Common Law" acquired its name.

It is important to note that in the development of our law, as was ably stated by Dean Roscoe Pound in his book "The Spirit of the Common Law," *"The Judge could not make the law but could only find it."*

About the year 1250, a very able Judge, Henry of Bracton, published a book of nearly nine hundred pages entitled, "A Tract on the Laws and Customs of England." On the very first page of his book Bracton asserts that "the present bench is much inferior to its predecessors; foolish and ignorant judges, who have mounted the judgment seat before they have learnt the law, have corrupted its doctrine; they decide cases by fancy rather than by rule." So Bracton announced his intention to attempt to bring back the law to its ancient principles by collecting and publishing two thick volumes of decisions of a previous generation of upright judges. Bracton's work has been referred to as the foundation of the "case system". Churchill in his "History of the English Speaking Peoples" says:

> "The law was already there in the customs of the land, and it was only a matter of discovering it by diligent study and comparison of recorded decisions in earlier cases, and applying it to the particular dispute before the Court."

Blackstone, in his Commentaries, says:

> "For it is an established rule to abide by former precedents, where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain and perhaps indifferent, is now become a permanent rule which it is not in the breast of any subsequent judge to alter or vary from according to his private sentiments; he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one."

The rigid adherence to precedent is one of the fundamental principles of the Common Law. This has enabled lawyers to advise their clients with reasonable certainty what the law was, and has largely contributed to the economic success of two of the greatest nations ever to exist.

Much of the history of the Common Law deals with the struggles between the courts and the Crown. Sir Edward Coke was the prime champion of the authority of the law as opposed to the King's prerogative. On a memorable Sunday morning, the 10th of November, 1612, the Judges of England were summoned before James I on complaint of the Archbishop of Canterbury. The High Commission, an administrative tribunal established by regulation of the Church, had sought to extend its jurisdiction over lay matters—whereupon, the Judges had issued writs of prohibition against the Commission. King James took the part of the Archbishop and insisted that the Judges had only such authority as he delegated to them and they should do his bidding. Coke defied the King and quoted from Bracton that the King was not under any man but under God and the Law. The struggle continued for years. Coke refused to give any pledge but to administer the law as a judge should. He was placed in the Tower, and would have been executed except the King feared the people. This struggle continued after the death of both James and Coke and finally resulted in Charles I being beheaded, thus demonstrating that the law was superior to the will of the King.

This victory was due to the courage and ability of many able Judges. Lord Campbell thought that the lives of the Chancellors and the Chief Justices might be made to tell the history of the English Law. Lord Chancellor Haldane in 1913 addressed the American Bar Association, and in discussing the spirit and traditions of the English Law said that it was hopeless to attempt to study Anglo-Saxon jurisprudence apart from the history of its growth and the character of the judges who created it. Viscount Jowitt, in a speech before the American Bar Association in 1947, said:

> "Before appointing a Judge I always talk it over with my Brother Judges. I have never let political considerations weigh with me to the slightest degree in trying to get the fittest man. I have never appointed, incidentally, a member of my own party.
>
> "From the universal respect in which our Judges are held, from the recognition of even-handed justice which is given to all our citizens, springs our respect for law and order to which we can attribute the fact, I believe, my people are the most law abiding people in the world."

Our jury system is a product of the Common Law. Henry II, who ruled from 1154 to 1189, encouraged jury trials to make his royal court more popular and more efficient than the courts of the feudal lords. For a time jurors whose verdicts were displeasing to the King were subject to punishment by the Star Chamber Court which did not use juries. However, such proceedings became so oppressive that the Star Chamber Court was abolished and the right to punish a juror for his verdict was abolished by Parliament. Each year more than a million citizens of this country participate in our government by serving on juries. We owe this great privilege to the sacrifices and struggles of our forefathers. Trial by jury prevailed over all attacks against it on account of the confidence of the public in jury verdicts.

Through many long and bitter conflicts the Common Law has recognized and established the fundamental rights of man. The right of the accused not to be compelled to testify against himself, the right of habeas corpus, and the other basic privileges contained in our Bill of Rights, had their origin in the Common Law.

We owe much to the early settlers in America. It is hard to realize, today, the difficulties and hardship which they endured. John Smith in his diary states that as a result of famine and sickness the living were scarcely able to bury the dead. The Puritans were impelled by such religious fervor that they left England rather than obey James I's command to conform to the beliefs and practices of the Church of England. It is unthinkable that such courageous and indomitable people intended to give up any of their rights. They came to America seeking not less but more freedom, including the right to worship according to the dictates of their own conscience.

The Privy Council in 1722 provided:

> "that as the law is the birthright of every subject, . . . wherever they go they carry that law with them."

Rugged and honest Judges exercised vigorous good sense in applying and adapting the Common Law to pioneer communities. Andrew Jackson, who charged his juries to do right between man and man, is a good example of a frontier Judge. Cooper in his "Pioneers" states:

> "The whole district is hourly exhibiting how much can be done, in even a rugged country, and with a severe climate, under the dominion of mild laws, and where every man feels a direct interest in the prosperity of a commonwealth of which he knows himself a part."

Edmund Burke, in his famous speech in Parliament on "Conciliation with the American Colonies," paints a vivid picture of the conditions existing in the Colonies at the time of the Revolution.

"First, the people of the Colonies are descendants of Englishmen. England, Sir, is a nation which still, I hope, respects, and formerly adored, her freedom. The Colonists emigrated from you when this part of your character was most predominant; and they took this bias and direction the moment they parted from your hands. They are therefore not only devoted to liberty, but to liberty according to English ideas, and on English principles. . .

". . . The Colonies draw from you, as with their life-blood, these ideas and principles . . ." He stated further:

> "Permit me, Sir, to add another circumstance in the Colonies which contributes no mean part toward the growth and effect of this untractable spirit. I mean their education. In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of deputies sent to the Congress were lawyers. But all who read, and most do read, endeavor to obtain some smattering in that science. I have been told by an eminent bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the Plantations. The Colonists have now fallen into the way of printing them for their own use. I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England."

Anti-British feeling persisted after the War for Independence. In 1799 New Jersey forbade the citation in court of any English decision rendered since the Declaration of Independence. Many leaders in American thought had strong French sympathies and urged the abandonment of the Common Law and the adoption of the Civil Law.

The roots of the Common Law were too firmly planted in the minds and hearts of the Colonists to be supplanted by any other system. Wherever the Common Law has come into conflict with other systems it has survived, we hope because it is the "survival of the fittest." Virginia enacted a statute affirming that the Common Law was in effect in that State and most of the other States soon followed her lead. Florida and Texas and Missouri abolished the Spanish law and adopted the Common Law. Michigan, after adopting the Civil Law, soon abandoned it for the Common Law. Only the State of Louisiana retained the Civil Law.

Let us consider our present day jurisprudence to determine whether we are today enjoying to the fullest extent our heritage—the Common Law.

The case of *Brown v. Board of Education,* 347 U. S. 483 (1954), has doubtless caused more chaos than any other decision ever rendered

by the United States Supreme Court. It is unnecessary to discuss the details of the opinion in this case, as you are all familiar with them. The Court wholly failed to follow previously established precedents. There had been not less than fifty well-reasoned cases, several of which had been decided by the United States Supreme Court itself, holding that equal but separate educational facilities were legal. The Court wholly disregarded these decisions of able Judges without overruling its own cases and gave as its reason changed conditions and cited as authorities textbooks on sociology.

The conclusion is inevitable that the Court did not declare what the existing law was but wrote a new law according to the ideology of its members as to what the law should be, thereby usurping the function of Congress. The Court did not even base its decision on what it found to be the intention of the persons who enacted the 14th Amendment. On the other hand, it specifically declared that it was unable to ascertain such intention. Section 5 of the 14th Amendment provides:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

The Court was unwilling to rely upon Congress to pass legislation implementing said Amendment but undertook to assume such authority itself, thereby exercising legislative and not judicial functions.

The American public today has as high regard for Judge Learned Hand as it has for any jurist in America. He recently delivered three lectures on the Bill of Rights before the Harvard Law School. Judge Hand said that he "has never been able to understand" on what basis the Supreme Court adopted the view that it may actually legislate. He asked whether we should establish a "third legislative chamber." Judge Hand repeatedly returns in his lectures to the key problem of the Court's proper authority. Should it confine itself to establishing what is the law of the land, or should it act as a "third legislative chamber" and try to prescribe what the law should be? He further states, "If we do need a third chamber, it should appear for what it is, and not as the interpreter of inscrutable principles". He clearly condemns the attitude of the Court and states, "For myself it would be most irksome to be ruled by a bevy of platonic guardians, even if I knew how to choose them, which I assuredly do not."

A careful consideration and analysis of the decision in the Brown case shows that Judge Hand's conclusions are not only logical but eminently sound. We therefore have a bold usurpation of legislative authority by the judiciary. Alexander Hamilton, writing in the Federalist, stated:

> "The Judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; be-

cause it will be least in a capacity to annoy or injure them . . . the judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgement; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgment . . . It is beyond comparison the weakest of the three departments of power; and can never attack with success either of the other two."

Hamilton's statement was based upon the assumption that the judiciary would perform its proper function. He then assumed that the judiciary might attempt to assert legislative powers and recognized that the liberty of Americans would be in grave danger.

"Though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; *I mean so long as the judiciary remains truly distinct from both the legislative and executive powers . . . Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either or both of the other departments.*"

Washington apparently had this situation in mind when in his farewell address he said:

"If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation for though this, in one instance, may be the instrument of good, *it is the customary weapon by which free governments are destroyed.*"

In the case of *Konigsberg v. State Bar of California*,[1] the Court reversed the decision of the California Committee of Bar Examiners and of the California Supreme Court and held that it was unconstitutional to deny a license to practice law to an applicant who refused to answer questions put to him by the Bar Committee as to whether or not the applicant was a Communist.

A similar decision was rendered in the case of *Schware v. Board of Bar Examiners of New Mexico*.[2]

These cases are of utmost importance to the members of the Bar. If the Supreme Court has the right to take over the functions of the States of California and New Mexico and determine who can practice law in said States, they can determine who may be members of the Bar in each and every State in the Union.

1353 U.S. 252 (1957).
2353 U.S. 232 (1957).

In the *Schware* case the New Mexico Supreme Court said in part:

> "We believe one who has knowingly given his loyalties to the Communist Party for 6 or 7 years during a period of responsible adulthood is a person of questionable character."

The Supreme Court substituted its judgment for that of the New Mexico Court and ruled that:

> "Membership in the Communist Party during the 1930's cannot be said to raise substantial doubts about his present good moral character."

Never before May 6, 1957, when the Court handed down the *Schware* and *Konigsberg* decisions had it presumed to tell a State Bar Association whom it could and could not admit. The Associations are regulated by State Laws and, according to tradition, have been able to establish their own special standards and conditions for admittance.

Under the California law an applicant is required to prove affirmatively—(a) that he has good moral character, and (b) that he does not advocate forceful overthrow of the Government. Konigsberg repeatedly refused to answer every question put to him relating to Communism or his alleged activities on behalf of the Communist Party and its doctrines. Nevertheless, the Supreme Court reversed the decision of the Committee on applications and the decision of the California Supreme Court and held that nothwithstanding the fact that he was a Communist he was entitled to practice law in California and that the laws and regulations to the contrary were invalid.

These decisions constitute legislation and usurpation of power by the Court in matters of vital interest to the members of the Bar.

Permit me to refer briefly to a dozen other cases decided during the past two years by the United States Supreme Court relating to Communists or subversive activities:

1. *Communist Party v. Subversive Activities Control Board.*[3] The Court refused to uphold or pass on the constitutionality of the Subversive Activities Control Act of 1950, and delayed the effectiveness of the Act.

2. *Pennsylvania v. Steve Nelson.*[4] The Court held that it was unlawful for Pennsylvania to prosecute a Communist Party leader under the Pennsylvania Sedition Act.

3. *Fourteen California Communists v. United States* (*Yates v. U.S.*)[5] The Court reversed two federal courts and ruled that teaching and advocating forcible overthrow of our Government, even "with evil intent," was not punishable under the Smith Act as long as it was

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[3]351 U.S. 115 (1956).
[4]350 U.S. 497 (1956).
[5]354 U.S. 298 (1957).

"divorced from any effort to instigate action to that end," and ordered five Communist Party leaders freed and new trials for another nine.

4. *Cole v. Young.*[6] The Court reversed two federal courts and held that it was not in the interest of the national security to dismiss an employee who contributed funds and services to a subversive organization, unless that employee was in a "sensitive position."

5. *Service v. Dulles.*[7] The Court reversed two federal courts which had refused to set aside the discharge of John Stewart Service by the State Department.

6. *Slochower v. Board of Education of New York.*[8] The court reversed the decisions of three New York Courts and held it was unconstitutional to automatically discharge a teacher, in accordance with New York law, because he took the Fifth Amendment when asked about Communist activities.

7. *Sweezy v. New Hampshire.*[9] The Court reversed the New Hampshire Supreme Court and held that the Attorney General of New Hampshire was without authority to question Professor Sweezy, a lecturer at the State University, concerning a lecture and other suspected subversive activities.

8. *Jencks v. United States.*[10] The Court reversed two federal courts and held that Jencks, who was convicted of filing a false non-Communist affidavit, must be given the contents of all confidential FBI reports which were made by any Government witness in the case.

9. *Watkins v. United States.*[11] The Court reversed the Federal District Court and six judges of the Court of Appeals of the District of Columbia, and held that the House Un-American Activities Committee should not require a witness who admitted, "I freely cooperated with the Communist Party" to name his Communist associates, even though the witness did not invoke the Fifth Amendment. The Court said: "We remain unenlightened as to the subject to which the questions asked petitioner were pertinent."

10. *Raley, Stern and Brown v. Ohio.*[12] The Court reversed the Ohio Supreme Court and set aside the conviction of three men who had refused to answer questions about Communism activities put to them by the Ohio Un-America Activities Commission.

11. *Flaxner v. United States.*[13] The Court reversed two federal courts and set aside the conviction of Flaxner of contempt for refusing

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6351 U.S. 536 (1956).
7354 U.S. 363 (1957).
8350 U.S. 551 (1956).
9354 U.S. 234 (1957).
10353 U.S. 657 (1957).
11354 U.S. 178 (1957).
12354 U.S. 929 (1957).
13354 U.S. 929 (1957).

to produce records of alleged Communist activities.

12. *Sacher v. United States.*[14] The Court reversed two federal courts and set aside the conviction of Sacher of contempt for refusing to tell the Senate Investigations Subcommittee whether he was or ever had been a Communist.

Dean Clarence Manion, who was for more than twenty-five years Professor of Constitutional Law at the University of Notre Dame, testified before the Senate Judiciary Committee with respect to the above cases as follows:

> "The record of the Supreme Court during the past 2 years in all cases affecting Communists and communism is a history of usurpations and invasions of the constitutional powers of Congress and the reserved rights and responsibilities of the States of the Union. Taken together, the 15 cases cited in the indicated report of the American Bar Association committee contain examples, not merely of judicial legislation, but of resulting anarchy where Congress and the States are left powerless to detect and/or correct the evil of Communist subversion which is thus immunized by a barricade of strange judicial constructions, often fabricated from the wreckage of the Court's own previous decisions."

The correctness of Dean Manion's opinion is confirmed by what appeared in the Communist "Daily Worker" relating to said decisions:

> "The Court delivered a triple-barreled attack on
> (1) the Department of Justice and its Smith Act trials;
> (2) the free-wheeling congressional inquisitions; and
> (3) the hateful loyalty-security program of the Executive. Monday, June 17, is already a historic landmark . . . *The curtain is closing on one of our worst periods.*"

The above decisions and others were analyzed by David Lawrence in a vigorous editorial in which he reached the following conclusions:

> "So the net result of the recent decisions of the Supreme Court of the United States has been to do the following things:
>
> "1. To make easier the escape of criminals and traitors from prosecution or exposure, and to make harder the process of detection.
>
> "2. To cripple the investigating power of State Legislatures and city and county governments in studying corrupt operations not yet covered by any laws.
>
> "3. To hamstring the Congress and deprive it of the best way to get the information about the operations of criminals and traitors needed to write the necessary laws to fight such criminals and

[14] 354 U.S. 929 (1957).

traitors.

"4. To make it easier for foreign governments hostile to us to operate on American territory through parties and groups and 'fronts' that can destroy not only the Bill of Rights but the lives and property of our citizens when the time comes to complete the conspiracy by infiltration or war.

"Treason has won its biggest victory."

Few people would challenge the statement that the reputation of the United States Supreme Court has sunk to its lowest level in history. It certainly should give no member of the Bar pleasure to criticize the highest court in the land—a court that we have been taught to respect and of which we have been proud in former times when its judges were intellectual giants.

The public is already aroused over the situation, and as time progresses the recent decisions of the United States Supreme Court will be among the most discussed subjects in our history. It is of the utmost importance that the opinion finally reached by the American people shall be an informed opinion and that the correct results shall be reached. This can only be done through tireless and courageous work on the part of the members of the Bar of this State and every other State in the Union. The Mississippi Bar stands as high in intellectual ability, character and courage as any Bar anywhere. These decisions are vital and of peculiar interest to our southern way of life. It therefore behooves us to take the lead in this matter.

In fairness to Honorable Tom Clark, I would like to say that he has filed vigorous dissenting opinions in most of the cases discussed here today. For instance, in the California Communist case Judge Clark in a dissenting opinon said:

"This Court should not acquit anyone here. In its long history, I find no case in which an acquittal has been ordered by this Court on the facts. It is somewhat late to start in now usurping the function of the jury, especially where new trials are to be held covering the same charges."

Judge Clark is entitled to the gratitude and the thanks of the American people and especially of members of the Bar. He and the other members of the Court who are not inclined to go along with the usurpation of power by the Supreme Court and the present trend should be encouraged by their fellow members of the Bar.

The present is no time for complacency. If we sit idly by we are liable to awake some day and find that we are living in a country with a socialistic government without a shot having ever been fired or a vote having been taken in Congress. If the present trend continues,

it is quite possible that our form of government could be changed by the ideological opinions and sociological theories of five men, none of whom have been elected to office and much of whose work is done by law clerks, a majority of whom are not members of the Bar and have never tried a case.

That lawyers have a vital stake in the form of our government is self-evident. Let us remember the plight of the barristers in England who are literally starving under a socialistic form of government and let us put our shoulders to the wheel and do our utmost to see that our jurisprudence is returned to the ancient landmarks established by the Common Law.

Mr. Frank W. Waldon of Natchez presented the Report of the American Citizenship Committee.[1] Mr. Sherwood W. Wise of Jackson presented the Report of the Atomic Energy Committee. No action was necessary on these reports.

Mr. J. Kearney Travis of Hattiesburg presented the Report of the Budget and Finance Committee. Upon motion and second this report was adopted.

Mr. R. Pearce Phillips of Brookhaven presented the Report of the Complaint Committee. Upon motion and second this report was adopted.

Lieutenant Governor Carroll Gartin of Laurel then introduced Senator John C. Stennis of Mississippi, who delivered the following address.

THE MULTIPLYING EVILS OF BAD LAW

*John C. Stennis**

Yesterday Federal troops were removed from Little Rock. This ended a condition which none of us ever believed could come about, in the South or anywhere in the United States. As they remained in Little Rock for the last nine months, the significance of this hasty attempt to operate schools by military force has gradually seeped into the minds and conscience of the American people. Troops have been removed only because the school term has ended, and we all hope and believe that the error of bayonet rule will not be repeated; that the evils stemming from the School Segregation Cases will not be further multiplied. After the next three months this problem may arise again, and those of us who believe that Little Rock was a tragic

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[1]All committee reports will be found in Appendix A.

*United States Senator from Mississippi.

mistake should lose no time in analyzing and exposing this error in the hope that its repetition will be avoided.

In every generation one or two constitutional issues arise which vitally affect the structure of our government and are of such importance and significance as to eclipse other controversies. The use of Federal troops to enforce a school integration decree in Little Rock has raised one of the momentous constitutional issues of our time and of all time.

This question is: Did the President have the statutory or constitutional power to do what he did?

A careful consideration of this question requires the analysis of two principal issues:

1. Whether any statutes of the United States vest this power in the President, and

2. Whether the Constitution expressly or by necessary implication authorizes his use of Federal troops in such circumstances.

Today let us make an objective analysis of the legal and constitutional questions involved in the Little Rock case. Prior to consideration of these issues, a statement of the facts and legal history leading up to the Executive action in question is necessary.

I. The School Segregation Cases

The origin of the trouble in Little Rock came from the School Segregation Cases decided in 1954. The explosive consequences of this fatal judicial error were predictable. When the Court substituted psychological and sociological grounds for legal precedent in these cases and extended the operation of the 14th Amendment's equal protection clause contrary to all precedent and contrary to the terms of the 14th Amendment itself, some tragic consequences could have been and were foreseen.

II. Factual And Legal Background Of The Little Rock Incident

With the School Segregation Cases as the background, the Little Rock School Board in May, 1955, adopted a plan for integration of the schools in the Little Rock District. Because it did not move fast enough to suit some people, the School Board and District were sued and the implementation of the plan sought to be enjoined. This was denied by the Federal Court, which upheld the integration plan and on appeal the trial court was sustained. In 1957 a Mrs. Thomason obtained an injunction restraining the School Board from putting their integration plan into effect. Judge Ronald Davies, sitting in the Federal District Court by special assignment, subsequently enjoined Mrs.

Thomason from using her state court order and held her order void and of no effect.

On September 2, Governor Faubus put the Arkansas National Guard around Central High School in Little Rock, explained publicly that there was threatened violence, and stated that to avoid this violence, the Guard was put there, and that the school would be operated on a segregated basis as in the past. The School Board then requested Negro students not to attend Central High School until the problem was resolved. The next day the Board petitioned the court, reciting these facts and asked to be exempt from any charge of contempt. Federal Judge Davies ordered the Board to integrate the school immediately according to plan.

On September 7, he denied the School District's petition asking for temporary suspension of the plan.

On September 9, Judge Davies requested the United States to give the court the benefit of its views and recommendations, as amicus curiae, and the next day the Government entered the case, charging that the Governor, State Adjutant General and Unit Commander of the National Guard were obstructing the carrying out of the court order.

On September 20, Judge Davies issued a preliminary injunction against these new defendants, finding their use of the Arkansas National Guard unlawful. At the same time he refused to disqualify himself from the case and denied the motion to dismiss the United States as a party.

On September 23, the President issued his proclamation No. 3204, ordering persons obstructing the orders of the court to cease and desist and to disperse. However, this was not filed as a Federal Register document until 8:06 p.m. September 24, 1957, exactly one minute before Executive Order 10730 was similarly filed.

This Executive Order recited the issuance of the previous proclamation and directed the Secretary of Defense to order the Arkansas National Guard into Federal service to carry out the court's integration order. At the same time, Federal paratroopers were sent into Little Rock. These were removed earlier, but the Guardsmen remained until yesterday.

Although there are many vital aspects of this situation, I will confine my remarks today to the President's Executive Order 10730 and actions taken pursuant to it, with a view to determining whether they were lawful and within the President's statutory and constitutional powers.

III. Statutory Powers Of The President And Their Limitations

Executive Order 10730 expressly stated that it was based upon

Presidential power under "the authority of the Constitution and statutes of the United States, including Chapter 15 of Title 10 of the U. S. Code, particularly Section 332, 333, and 334 thereof . . ." Thus the first question is whether these or other statutes authorize the President to use armed forces of the United States or federalized state militia to enforce the decree of the Federal District Court in Little Rock. Article I of the United States Constitution delegates "all legislative powers" to Congress. Article II delegates the "executive power" to the President, including the duty to "take care that the laws shall be faithfully executed." Article III, Section I, delegates the "judicial power" to the Supreme Court and "such inferior courts as the Congress may from time to time ordain and establish."

The exclusive power of the Congress to provide for the method of execution of judicial decrees is further manifested by Article I, Section 8, Clause 18, the "necessary and proper clause." In brief, Congress has the plenary and exclusive power under the Constitution to create and abolish inferior courts, and to prescribe their jurisdiction, functions, and the methods of enforcing their decrees. This it has done. By law, Congress has stipulated that enforcement of Federal Court decrees is to be performed by U. S. Marshals and their deputies. 10 U. S. Code Section 547, states that the U. S. Marshal of each district "shall execute all lawful writs, process and orders issued under authority of the United States, and command all necessary assistance to execute his duties." This assistance which U. S. Marshals may command, in addition to their regular staff, is known as a posse comitatus. No effort was made to follow this section in enforcing the District Court decree in Little Rock. Let me repeat that no attempt was made to use this statutory authority.

There is in our Federal statutes a prohibition against using the Army or the Air Force as a posse comitatus, which reads as follows:

"1385. Use of Army and Air Force as posse comitatus.

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, wilfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both. This section does not apply in Alaska." 18 U. S. C. 1835.

The only exceptions are in cases expressly authorized by the Constitution or by an Act of Congress. This Section was first passed in 1878 to prevent President Hayes from using troops to enforce election laws in the South, either directly or through the U. S. Marshal. There is a great similarity between the evil this statute was written to prevent and the actual conditions which existed in Little Rock. When

passed, it was held by its proponents as a great victory for "a government of Law" and a barrier to the use of military force in connection with the President's power to "execute the laws." Clearly the action taken in Little Rock was in direct violation of the terms of this Section.

Prior to 1957 the President had specific statutory authority (42 U.S.C. 1993) to employ the land or naval forces of the United States, or of the militia, as necessary in the execution of judicial process under certain civil rights statutes, as follows:

"1993. Aid of military and naval forces.

"It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under sections 1981-1983 or 1985-1992 of this title, or as shall be necessary to prevent the violation and enforce the due execution of the provisions of sections 1981-1983 and 1985-1994 of this title."

But this power was expressly repealed by number in the Civil Rights Act of 1957 in the following words: "Section 122. Section 1989 of the Revised Statutes (42 U.S.C. 1993) is hereby repealed."

The President signed the Civil Rights Act on September 9, 1957, and yet within two weeks had exercised the power repealed by that law.

The Section quoted above was enacted in 1866 as part of the punitive Civil Rights statutes passed at the conclusion of the Civil War. In the original Civil Rights Bill of 1957 endorsed by the Administration, no reference was made to any change in this authority. However, during the course of the hearings, Attorney General Brownell was questioned about the possible use of troops and indignantly replied that no such method of enforcement was contemplated by the Administration. After thorough debate, the section relating to the use of troops to enforce decrees was repealed by unanimous vote of the Senate, and after a subsequent bitter struggle, Title III of the Civil Rights Bill of 1957, which applied to schools and other public institutions, was stricken from the Bill. That is what the fight was on, and I am still carrying in my pocket, and have it here today, a list of those senators that rose to the occasion, Senators outside of the South, that rose to the occasion and helped us strike Title III out of that bill, because it applied to schools after the Senate had unanimously voted to repeal this section giving the power to use troops in the enforcement of decrees under the old law as well as that bill. I say I carry that list around in my pocket. I don't want to be like the lepers, and I remember the story when Christ said—ten were healed, only one came back—and he

said, where are the nine? But, gentlemen, this is one of the tragic pages in American history. On top of what happened there in that debate, repeal of that law, and striking out Title III, within less than two weeks the troops were on the move. That debate, that repeal of law, striking out Title III, is conclusive evidence of the Congressional intent to keep Federal troops and bayonets from being used in the integration of our schools. That was all the talk in the cloakroom, the corridors, the floor of the Senate, and men from every area of this country, men of good will, talked to me in private conversations, as they doubtless did to others, with tears in their eyes, and said, "I know this means political trouble for me, but I have always stood for education and for the forward looking things in life, and I know nothing can be done with troops and bayonets, and I am going to vote to take out this Title III which eliminates schools from the Bill."

But, back to the President's order.

The Code Sections referred to in the Executive Order are three in number collected under a chapter of Title 10 of the Code, entitled "Insurrection." Section 331 authorizes the Federal Government, acting through the President on the request of the legislature of a state, or the governor of a state if the legislature cannot be convened, to give military aid to suppress an insurrection against the state government. This Section is clearly not applicable here because there was no insurrection against the state government, nor was any request made.

The three remaining Sections of this Chapter 15 of Title 10 are interrelated and can be considered together. They provide as follows:

"332. Use of militia and armed forces to enforce Federal authority.

"Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

"333. Interference with State and Federal Law.

"The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

"(1) so hinders the execution of the laws of that state, and of the United States within the States, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of

that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

"(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

"334. Proclamation to disperse.

"Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time."

Thus the President's statutory power must be based, if at all, on Sections 332 and 333.

Do these two statutes authorize the action taken in calling out Federal troops and state militia to enforce the school integration decree? This question must be answered in the negative for five principal reasons:

First. Both Acts authorize the President to use troops only to enforce "the laws of the United States." It is well settled that the "laws" which the President must faithfully execute under these statutes and under Article II, Section 3, of the Constitution are the Acts of Congress. The Constitution itself so defines this phrase in Article VI, Section 2, where it is stated that "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land."

The most recent cases reaffirming this time-honored principle were the Steel Seizure Cases. Of course, no Act of Congress requires integrated schools.

Second. Sections 332 and 333 clearly differentiate in their own terminology between "laws of the United States" and judicial decrees to enforce them. For example, Section 332 conditions the calling into Federal service of the state militia upon it being impracticable "to enforce the laws of the United States . . . by the ordinary course of judicial proceedings." Hence it distinguishes between "laws of the United States" and their enforcement by "judicial proceedings." The former phrase would necessarily exclude judicial decisions as "laws of the United States."

Third. Congress, only two weeks before the Executive Order sending troops into Little Rock, had repealed, with the President's own consent, the only then existing statute which gave him power to use Federal troops to enforce judicial decrees.

Fourth. Section 332 authorizes the President to call into Federal service the state militia to enforce laws of the United States, or to sup-

press a rebellion. However, when this is necessary, Section 332 cannot be considered alone in determining whether the state militia were properly called into Federal service. The President's authority to call in the National Guard and the procedure he must follow are set forth in Title 10, U.S.C. 3500:

"Whenever—

"(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

"(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

"(3) the President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the Army National Guard of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the Governors of the States, the Territories, Puerto Rico, and the Canal Zone, and, in the District of Columbia, through the commanding general of the National Guard of the District of Columbia."

None of the conditions set forth in this Section existed in Little Rock. There was no danger of invasion or rebellion and no indication that the President was unable with the regular forces to execute the laws of the United States. There was no effort made to execute those laws with the United States Marshall or posse comitatus. There was no effort made to file injunction against the people who might have interfered temporarily, hail them into court, subject them to Federal law, which is clear and plain. The only injunction suit filed was against Governor Faubus and his military commanders, and they obeyed the orders of that injunction. Moreover, this Section requires that orders to call into the Federal service members of the National Guard " . . . shall be issued through governors of the States." No order of this type was issued by the Governor of Arkansas as required. Hence the conclusion is inescapable that the calling into Federal service of the National Guard of the State of Aransas was unauthorized and contrary to the statutory requirements.

Through our analysis of the foregoing Section, we have seen that the protection offered the people of a state against arbitrary use of their state National Guard is two-fold:

First. The conditions under which the state National Guard may be called into Federal service are strictly defined and thus limited; and

Second. The procedure the President must follow is clearly set forth.

By our analysis of the events leading up to the Little Rock crisis, we have concluded that the conditions did not exist that would authorize such use of the Arkansas National Guard by the Federal Government, but regardless of this, the procedure followed in Little Rock did not follow the requirement of law, and therefore such use of the Arkansas National Guard is illegal.

Congress, to prevent the illegal use of Government funds, established the General Accounting Office. This office, through its head, the Comptroller General of the United States, is the watchdog of the use of Government funds. The Comptroller General is a legislative officer—not an executive officer. It is his duty and responsibility to pass on the legality of the payment of Government funds. In making these decisions, he is required to follow the letter as well as the spirit of the law. I have written the Comptroller General of the United States asking him to look into the legality of payments made to Arkansas National Guardsmen during this period of Federal service, and after reviewing carefully the conditions of their federalization and the procedure followed in ordering them to Federal service, to make an independent determination as to the legality of payment of these funds appropriated for national defense.

Fifth. The only other specific authority on which the use of these troops could be based is Article IV, Section 4, of the Constitution, which states, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion: and on application of the Legislature or of the Executive (when the Legislature cannot be convened) against domestic violence." The Founding Fathers did not want Federal interference unless expressly invited. The quoted section is a clear statement of that purpose. If the President's action was based on an alleged condition of "domestic violence" in Arkansas, this action was unconstitutional since it was not in response to an application of the Arkansas Legislature or Governor. For these reasons, Sections 332 and 333 could not be applied to the Little Rock situation if domestic violence is relied on as the reason for this action. In this context, use of troops there is clearly in excess of the President's power.

For all these reasons, the conclusion is inescapable that the President had no statutory power to promulgate Executive Order 10730, to federalize the Arkansas National Guard, and to use them and U. S. Army soldiers to enforce the school integration decree of the Federal District Court in Little Rock.

IV. Constitutional Powers Of The President And Their Limitations

We now come to the issue of whether in the absence of statutory authority—and in fact contrary to it—the President possessed the independent power under the Constitution itself to use Federal troops and State Guardsmen in Little Rock to enforce the school integration decree of the Federal District Court.

Congress, acting under its constitutional power, prescribed the method of enforcing District Court decrees by use of United States Marshals. It has also repealed any power the President had to use military force in enforcing such decrees.

There is no express grant of power in the Constitution that would authorize the President to act as he did in Little Rock.

It is generally recognized that the Federal Government is one of delegated powers which derive their vitality only from the Constitution. The powers of government are divided between the national government and the states. Implicit in this established principle is the rejection of any theory of "inherent powers" in the Presidency or any branch of government.

Presidential prerogative has been recognized in defining national policy with respect to foreign affairs although even in this area it has always been recognized that Congress by exercising its legislative power can nullify Presidential action. As Commander-in-Chief of the armed forces he also has certain war powers which give his office a policy-making function. However, in Little Rock the President was manifestly not acting under either his war powers or powers over foreign affairs. The only powers which could be fairly held to have been used are in connection with his obligation to "take care that the laws be faithfully executed". Clearly the "laws" referred to are Acts of Congress and the action taken in Little Rock was not taken pursuant to such Acts, but contrary to them. Thus the President acted without express or implied constitutional power.

As the Supreme Court said in the Steel Seizure Cases: "Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the law-making process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make the laws which the President is to execute . . . The President's (referring to the steel plant seizure) order does not direct that a

Congressional policy be executed in a manner prescribed by Congress—it directs that a Presidential policy be executed in a manner prescribed by the President . . ." (Youngstown Sheet & Tube v. Sawyer, 243 U. S. 587).

I think this classic statement defining the President's role applies to the Little Rock situation as it did to the Steel Seizure Cases. It was a presidential or an executive policy that was being implemented, not a Congressional policy, not with Congressional authority, but contrary to it.

In conclusion, and by way of summary, not of the legal points which have already been enumerated, but as a summary of the practical considerations, I would like to point out that:

The resort to military force was unauthorized by law or the Constitution—and even if it had been authorized, it was premature.

There was no real attempt to try civil remedies—much less exhaust them. There was no real effort to enforce the court decree by using the U. S. Marshal's office, or by augmenting his staff through a posse comitatus.

There was no real attempt to try the injunctive process with its ever present threat of contempt proceedings. The only persons, as I said, who were enjoined by the Federal Court, the Governor and the Arkansas Guard officers, readily obeyed the court mandate.

Governmental action taken at Little Rock, my friends, follows the most disturbing pattern of our time; that is, the trend toward interpretation of law in terms of expediency, the very contrary position to which our president in his very able address just referred, and this is over in the judicial branch of the government and it is in the executive branch of the government, and it is in part responsible to organized pressure groups that we are having with us more, and more, and more.

The present President of the United States is not a willful, nor reckless nor mischievous man. But some future President with a less lofty regard for his post under political pressures can well take refuge in this precedent in an attempt to rule with arbitrary power. This can come and will come, this question will come in other fields of endeavor, in the business world, in the field of various rights, and here is the hope that the nation will become aroused. The resort to this type of enforcement next year will serve to re-enforce and underscore the tragic precedent of the 1957 orders and will make easier in the future our degeneration to a nation whose Chief Executive can quickly reach for military power before civil remedies have even been tried. Such use of power for any domestic purpose must first be authorized by the Congress, and if it is to be resorted to in the future, let this power be defined narrowly and its limits described strictly.

My presentation of this matter has been strictly from a legal standpoint. I have tried to get a copy of the legal opinion given the President by his advisors before he took these tragic steps. If there is such an opinion, it has been withheld. This is technically justifiable as it is a privileged executive communication. But I believe this opinion should be made public as it was the President's legal guide for these fateful actions. I believe this opinion would disclose more political advice than legal reasoning.

The President is responsible for his action even though I do not believe he would knowingly act without what he then thought was legal authority, and I urge him to make a deliberate examination of his own, with such outside examiners as he may see fit, who are versed in the law, as to his authority before he acts again in this momentous matter.

Now I believe, my friends, it is our special duty as lawyers to explain to those who will listen the basic dangers inherent in this Little Rock crisis. The legal precedent stands; if it goes unchallenged, it can be relied on in the future by some less responsible President for further extending domestic power by military force. This must not happen. Bad law, such as the School Segregation Cases, has a tendency to produce additional evil and a corresponding contempt for all law. We must use every lawful means to combat this bad law and its multiplying evil effects. And I feel it is our special duty and our special trust as lawyers, and I appeal not only to you but to the lawyers of the nation to re-examine, if they have not already made some kind of an examination, to thoroughly examine the legal points that we have discussed here today, and advise their fellow lawyers and fellow citizens of the extremely critical nature of the problem involved from a Constitutional and from a legal standpoint. We stand in the shadow of another great growing power in this nation, and I make no accusation against them, the military power. We are going to have to have a tremendous, tremendous military program for the foreseeable future, and I have more concern in addition to our rights involved as individuals and our problems, I have more concern about the over-reaching, over-stepping of the Constitution and the statutes and the precedent set with use of military force than perhaps any other immediate problem confronting our nation, and especially when it emanates from the President, from the White House itself.

Now may I add a few special words about our own problems here in Mississippi. The history of integration in the Little Rock Central High School has a number of points for us in Mississippi, and particularly for us as lawyers to consider. We must avoid some of the mistakes made in Little Rock, should similar conditions confront us in the

future.

First, we must stand united in the community, in the school district, in the county, and in the state, against ill considered action by court cases which are not brought in good faith but result from outside pressure. The community must stand firm and not be divided as was the sentiment in Little Rock. Running all the way through the recitation of the facts in that fateful case is reflected a sharp division among the people there, and my first recommendation is that we must avoid that error. We can, we must, stand united.

Second, if such cases are actually litigated, they must be fought out individually as they arise on the circumstances of each case. An exhaustive and complete record of testimony, and the legal points involved, should, and must be made at the trial, so that as detailed an analysis of the local situation as it is possible for community leaders to make, will become part of the court record at the early stages. This will give the trial judge and any reviewing judge the full opportunity to evaluate the depth of feeling at the community level, and the conditions existing there. I think, my friends, that we can go a long ways on the facts of the case under the Brown decision, which is the segregation case, in proving by local witnesses, even by the mothers of the little boys and girls, what will be the consequences of enforcing or rendering a decision that compels integration which will destroy our schools. I think that should be made a part of the testimony, so that any judge, who would, will have a chance for the first time under sworn evidence to measure the consequences of a court order on that subject. And I believe that not only mothers of our white children, but I believe mothers of our colored children, on the stand in the situation, would furnish testimony of that nature.

Third, perhaps the Jackson case, which grew out of the Little Rock incident, might have had a more favorable result on appeal if the tested procedure of the Steel Seizure Cases had been followed. Jurisdiction should be clearly established in the pleadings. The Secretary of Defense ought to be enjoined and the Constitutional principles affirmed in the Steel Seizure Case should be clearly brought in issue. I believe that our fairest hearing on the military enforcement of the school case, will result when we can show the close analogy of the Steel Seizure Cases.

I suggest these points; others will doubtless occur to you. But, most important, there must be a united effort on the part of lawyers and the people of Mississippi to protect our institutions, our local and state government, and our American way of life. I believe, my friends, that if we act wisely, firmly, and with common sense, time will run for us; but if we act otherwise, time may run against us. I think the atmosphere,

the sense of fairness but also the sense of firmness of our people, in the next few years, is going to be the deciding factor in determining the eventual final public opinion on this great subject. We must have an understanding, and we must have help from outside the immediate South. We deserve such help, and I believe by rightful conduct and firm determination, we can and will gain it.

May a wise and understanding Providence guide us and help us as we face this problem. May God bless you, and I thank you.

FRIDAY, MAY 30, 2:00 P. M.

Mr. C. Sidney Carlton of Sumner presented the Report of the Conference of Local Bar Associations.[1] Upon motion and second this report was adopted.

Judge Tom P. Brady of Brookhaven presented the Report of the Judicial Administration Committee. Upon motion and second this report was adopted.

Judge Lester Clark of Hattiesburg presented the Report of the Memorial Committee. Upon motion and second this report was adopted.

A jury trial was next presented, Judge Sidney Mize of Gulfport presiding. Mr. Earl Wingo of Hattiesburg presented the testimony of the plaintiff, and Mr. M. M. Roberts, Hattiesburg, presented the testimony of the defendant. Mr. James A. Dooley of Chicago, Illinois, presented the argument for the plaintiff, and Mr. Welcome D. Pierson of Oklahoma City, Oklahoma, presented the argument for the defendant. The jury awarded verdict for the plaintiff in the sum of $43,500.00.[2]

SATURDAY, MAY 31, 9:00 A. M.

Mr. Cary E. Bufkin, Chairman of the Law Journal Committee, presented the Editor of the *Mississippi Law Journal* who presented the Report of the Editorial Board of the *Mississippi Law Journal*.[1] No action was necessary on this report.

Mr. R. Taylor Carlisle of Jackson presented the Report of the Missisippi Lawyer Committee. No action was necessary on this report.

Mr. Reubel L. Phillips of Jackson presented the report of the Public Affairs Committee. Upon motion and second this report was adopted.

Mr. Leon F. Hendrick of Jackson presented the Report of the

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[1]All committee reports will be found in Appendix A.
[2]The arguments of counsel will be found in Appendix A, infra p. 513.

Supreme Court Building Committee. Upon motion and second this report was adopted.

Mr. Erskine W. Wells of Jackson presented the Report of the Public Relations Committee. No action was necessary on this report.

Mr. John T. Armstrong of Hazlehurst presented the Report of the Legislative Committee. No action was necessary on this report.

Mr. Ross Barnett of Jackson presented the Report of the Procedural Reform Committee. Upon motion and second this report was adopted.

Mr. W. E. Morse of Jackson presented the Report of the Probate and Trust Law Committee. No action was necessary on this report.

Mr. Gibson Witherspoon of Meridian then introduced Mr. J. Harry Cross of Baltimore, Maryland, who delivered the following address:

FEDERAL TAX CLAIMS

*J. Harry Cross**

The matter of taking the property of a third party for the federal taxes of another, arises in the course of competition by the Federal Government in the collection of delinquent taxes. The general setting is simple and commonplace. A man owns property, real or personal. In that same property, a third party has some interest such as a mortgage, a mechanic's lien, or some other lien. The man owes taxes to the Federal Government. While the third party's interest is outstanding, the Federal Government acquires a lien on account of the taxes. In the order of time, the third party's interest is earlier than the federal right. Finally, the third party and the Federal Government come into competition as the result of both seeking satisfaction out of the same property. In resolving this competition, the third party often has his interest taken away. The economic effect of this taking is the equivalent of making the third party pay federal tax of another. The legal effect is to give the Federal Government a greater interest in the property of the tax debtor than he, himself, possesses.

This taking is in connection with one or the other of two federal rights—the priority statute or the general tax lien statute. Under these statutes, has Congress allowed this taking? The answer is, no, never. Has the Supreme Court of the United States done so? The answer is, no, until the last 25 years. In the last 25 years, however, the answer is, yes, in pursuance of the Court's assumption of the role of a third legislative

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chamber.

For 139 years under the priority statute, and for 84 years under the general tax lien statute, the courts applied the Acts of Congress so that outstanding third party interests in property of the Government's debtor were not taken away in favor of the federal right subsequently arising. Then came the years 1933, 1950 and 1958, and, without the aid of Congress, the Supreme Court built detour roads around these statutes. Traveling along these detour roads, which were not charted in the Acts of Congress, the Court has created a judicial ambush with a time bomb which, so far, has exploded outstanding interests of third parties when the federal right arose. "Without the aid of Congress", has come to be the temperate way of describing where responsibility rests, and of saying that Congress has had no hand in these happenings. But Congress must reassert its will. The old roads and the recent roads give a picture of the rise and fall of judicial respect for the integrity of outstanding interests of third parties in property of the Government's debtor.

What property of a third party has been taken for the federal taxes of another? A complete category has not been staked out by the Supreme Court, but precedents of wide impact exist. The third party property that has been taken thus far includes:

A state's lien for corporate franchise taxes.[1]

A statutory trust fund.[2]

A state's lien for gasoline taxes on distributors.[3]

A landlord's statutory lien for rent.[4]

A state's lien for unemployment compensation contributions.[5]

Attachment liens.[6]

A town's lien for ad valorem tax on machinery.[7]

Mechanic's liens.[8]

A landlord's distress for rent.[9]

A garnishment lien.[10]

An assignment of money, as collateral security.[11]

A banker's lien for set-off.[12]

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[1]People of State of N.Y. v. Maclay, 228 U.S. 290, 53 S. Ct. 323 (1933).

[2]U.S. v. Knott, 298 U.S. 544, 56 S. Ct. 902 (1936).

[3]U.S. v. State of Texas, 314 U.S. 480, 62 S. Ct. 350 (1941).

[4]U.S. v. Waddill, Holland & Flinn, 323 U.S. 359, 65 S. Ct. 304 (1945).

[5]People of State of Ill. v. Campbell, 329 U.S. 362, 67 S. Ct. 340 (1946).

[6]U.S. v. Security Trust & Savings Bank, 340 U.S. 47, 71 S. Ct. 111 (1950); U.S. v. Acri, 348 U.S. 211, 75 S. Ct. 239 (1955).

[7]U.S. v. Gilbert Associates, 345 U.S. 361, 73 S. Ct. 701 (1953).

[8]U.S. v. Colotta, 350 U.S. 808, 76 S. Ct. 82 (1955); U.S. v. White Bear Brewing Co., 350 U.S. 1010, 76 S. Ct. 646 (1956); U.S. v. Vorreiter, 78 S. Ct. 19 (1957).

[9]U.S. v. Scovil, 348 U.S. 218, 75 S. Ct. 244 (1955).

[10]U.S. v. Liverpool & Globe Ins. Co., 348 U.S. 215, 75 S. Ct. 247 (1955).

[11]U.S. v. R. F. Ball Const. Co., 78 S. Ct. 442 (1958).

[12]Bank of Nevada v. U.S., 251 F. 2d. 820 (9 Cir., 1958), Cert. denied 78 S. Ct. 780.

And, incredible to say, a previous mortgage has been threatened by the Court,[13] and, as I apprehend, may have been taken by the Court.[14]

How is this taking accomplished? Simply stated, it is accomplished by judicially subordinating outstanding interests which third parties have in the property of the tax debtor. This subordinating is done in favor of the federal rights for the collection of taxes, usually. The process, where revealed, is principally the Court's own doctrine of "inchoate" lien. You are, of course, familiar with the inchoate right of dower,[15] but I venture you will find nothing similar to it in the Supreme Court's doctrine of inchoate lien. Perhaps it may even seem to you that the Court's views are exotic and labyrinthic.

At this stage, I must be mindful of the complaint against an elderly colored minister. He was called on the carpet by a committee of his flock and told that his preaching was not satisfactory. "How come?" said he. "Don't I argify and sputify?" "We agree," they replied "that you do argify and sputify, but your trouble is, you don't show wherein."

I will endeavor to show the "wherein," starting with a case which arose in your State and stimulated my interest in the subject. This case, I would mention at the outset, is a prime instance where the Supreme Court did not reveal its process of subordination. I refer to the case of *U. S. v. Colotta,* where, in 1955, the Supreme Court of your State[16] had to determine the contention of the Federal Government that an outstanding mechanic's lien was subordinate to a subsequent federal tax lien. The tax lien was for delinquent income taxes owed by the owner of the real property. The contract giving rise to the mechanic's lien had been performed but no steps had been taken to file or enforce the mechanic's lien before the federal tax lien arose and was recorded. However, the mechanic's lien was good for 12 months and that period had not expired. Under your statute, the mechanic's lien arose at the time of making the contract. At that time, the federal tax lien had not arisen. Thus, the earlier of the two liens was the mechanic's lien. Your Supreme Court, in a scholarly opinion by Justice Holmes, invoked a principle of universal application that, lien for lien, the first in time is first in right. Accordingly, your Court was on solid ground in holding that the outstanding mechanic's lien had priority over the subsequent federal tax lien. This opinion was so well reasoned that it did not seem the law could be otherwise. As an abundance of caution, I Sheppardized the case, and found, with astonishment, that

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[13]People of State of N. Y. v. Maclay, 228 U.S. 290, 294, 53 S. Ct. 323, 324 (1933).

[14]U.S. v. R. F. Ball Const. Co., 78 S. Ct. 442 (1958).

[15]Magee v. Young, 40 Miss. 164, 169 (1866).

[16]U.S. v. Colotta, 79 So. 2d. 474.

the U. S. Supreme Court had reversed summarily. The matter reversed summarily is precisely correct, for the Court gave no reason whatever. This is seen by the Court's full opinion, which reads:

> "PER CURIAM. The petition for writ of certiorari in this case is granted and the judgment is reversed."[17]

The one word, "reversed," was the Court's treatment of the first case of its kind to be decided by it. Mr. Justice Douglas dissented, without opinion. Upon later motion to your Supreme Court to reverse and remand, your Court said:

> "Our interpretation of our own state statute, as to when a mechanic's or materialmen's lien arises, appears to have been given no weight by the Supreme Court of the United States, . . ."[18]

The motion was reluctantly sustained by the majority, who felt the reversal left them no alternative. Three dissented on opinion by Justice Lee, and they pointed out that the reversal by the Supreme Court of the United States, without opinion, left them in the dark as to why the case was reversed and as to what was decided. Justice Lee's reference to the darkness in 1956, continues to be an apt description of the Supreme Court's action in later cases involving a mechanic's lien.[19]

The darkness in Colotta does not obscure the result. The result of the one word, "reversed," was that the outstanding mechanic's lien was judicially taken away in favor of the competing federal right. The economic effect of this taking was the equivalent of making the mechanic's lienor pay federal taxes of the owner of the real property. The legal effect was to give the Federal Government a greater interest in the property of the tax debtor than he, himself, possessed.

In Colotta, the federal right was under the general tax lien statute. It may be more helpful to postpone consideration of this statute in favor of the priority statute, because the Supreme Court's action under the priority statute is the precursor of its action under the general tax lien statute. Further, this sequence will enable us to see a remarkable contrast in the matter of the judicial approach, in different periods, toward respecting the integrity of outstanding interests of third parties.

Turning to the priority statute, commonly known as section 3466,[20] its history is that it was enacted in 1790, at which time it was limited to "bonds" for the payment of revenue duties. It was broadened in 1797, and since then has not undergone significant amendment.[21] Its

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[17]350 U.S. 808, 76 S. Ct. 82.

[18]86 So. 2d. 19, 20.

[19]See cases in note 8. For types of statutes that may afford protection to some mechanics lienors, see Bankers Title & Abstract Co. v. Ferber Co., 105 Atl. 2d 408 (N.J., 1954), and Robertson v. Huntley & Blazier Co., 115 N.E.2d. 533 (Ill. App., 1953).

[20]Now 31 U.S.C.A. 191-2.

[21]Price v. U.S., 269 U.S. 492, 46 S. Ct. 180 (1926).

essence, briefly, is that, in certain cases of insolvency, the debts due to the United States shall be first satisfied.

The effect of the priority statute was early described and limited in the Fisher case, decided by the Supreme Court in 1804, where Chief Justice Marshall observed:

> "On this subject it is to be remarked, that no lien is created by this law. No bona fide transfer of property in the ordinary course of business is overreached. It is only a priority in payment, which, under different modifications, is a regulation in common use;—"[22]

A year later, in the Hooe case, also decided by the Supreme Court, Chief Justice Marshall emphasized the no-lien aspect, saying:

> "In construing the statutes on this subject, it has been stated by the court, on great deliberation, that the priority to which the United States are entitled does not partake of the character of a lien on the property of public debtors. This distinction is always to be recollected."[23]

Deep appreciation of the no-lien distinction, arrived at on great deliberation[24] and always to be recollected, was the antithesis of the statute affecting any third party lien, general or specific, existing when the event took place which gave the Government a claim of priority. For more than a century and a quarter, the Supreme Court recognized this.[25] The result was that the priority statute did not subordinate, or interfere with, outstanding interests of third parties in the property of the Government's debtor. This remained the law, until a series of decisions commencing in 1933.

Commencing in 1933, the Supreme Court took an entirely new and different direction, known as inchoate lien. Congress, however, had not changed the priority statute, so we are now dealing with action by the Supreme Court in its assumption of the role of a third legislative chamber, which Judge Learned Hand recently called the Court.[26]

The Court's original position could be simply described, as I have mentioned. I regret that I am unable to simply describe the Court's new position. I find this so because of an exotic labyrinth. To attempt some penetration, I will ask your leave to notice a few selected cases.

The first decision of departure by the Supreme Court occurred in

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[22]U.S. v. Fisher, 6 U.S. 358, 390, 2 L.Ed. 304, 315 (1804).

[23]U.S. v. Hooe, 7 U.S. 73, 90, 2 L. Ed. 370, 375 (1805).

[24]Great deliberation was also asserted in Conard v. Pacific Ins. Co., 31 U.S. 262, 279-80, 8 L.Ed. 392, 398 (1832).

[25]See Brent v. Bank of Wash., 35 U.S. 611-12, 9 L.Ed. 547, 553 (1836). Chancellor Kent so understood the cases: Kent's Commentaries, Vol. I, p. 247 note a; likewise the Attorney General of the U.S., 9 Ops. Atty. Genl. 28, 29 (1857). See also U.S. Guaranty Trust Co., 33 F. 2d. 533, 536-7 (8 Cir., 1929).

[26]Hand, The Bill of Rights, 1958, p. 55.

the Maclay case,[27] decided in 1933. Here, the state had a lien for franchise taxes, which lien antedated federal priority. This lien, the court acknowledged, had no defects according to state law. Federal priority, however, caused the Court to look for and find a defect in the state lien. The found defect was that, although the state taxes were overdue,[28] their amount had not been liquidated by assessment at the date of federal priority. A lien in this condition was declared, in classic language often repeated later by the Court, to serve "merely as a caveat of a more perfect lien to come", state law to the contrary notwithstanding. The result was to subordinate the state lien. In this fashion was born the detour later to be known as the doctrine of inchoate lien.

Once born, the doctrine of inchoate lien was nurtured in subsequent decisions by the Supreme Court.

In the Knott case,[29] decided by the Supreme Court of Florida in 1935, that Court construed its own statutes to create a trust fund for the benefit of Florida creditors, and held that the federal priority right was not applicable to the trust fund. In 1936, the Supreme Court of the United States reversed. The Court's process was to convert the trust fund into an inchoate general lien, and then to declare that such lien lacked the characteristics of a specific perfected lien, which alone, the Court said, bars the priority of the United States.

In 1944, the highest court of Virginia decided the Waddill case,[30] where a landlord with a statutory lien for rent was opposed by the federal priority. The state court construed its own statutes to give the landlord a lien which is fixed and specific, and not one which is merely inchoate. In 1945, the Supreme Court of the United States disagreed, and reversed,[31] holding that the landlord's lien was inchoate. To sustain its view of the landlord's lien, the Court indulged in a variety of refinements, some of which may be mentioned for their novelty. The Court said that on the day the federal priority attached it was not certain whether the landlord would assert and insist upon his statutory lien. The landlord, however, had no prior notice of the attachment of the federal right. Another element of uncertainty was the amount of the rent claim on that day. The Court said this uncertainty was conceivable because "The landlord may have been mistaken as to the rental rate or as to payments previously made and the tenant may have been entitled to a "set-off". In the actual case, however, nothing supported this conceivability. Still another element of uncertainty, as alleged by the Court, was indefiniteness of the personal prop-

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27People of State of N.Y. v. Maclay, 228 U.S. 290, 53 S. Ct. 323 (1933).
28Revealed in U. S. v. State of Texas, 314 U.S. 480, 485-6, 62 S. Ct. 350, 353 (1941).
29U.S. v. Knott, 298 U.S. 544, 56 S. Ct. 902 (1936).
3028 S.E. 2d. 741.
31U.S. v. Waddill, Holland & Flinn, 323 U.S. 359, 65 S. Ct. 304 (1945).

erty subject to the lien. The Court pointed to state law whereby the landlord's lien could not be enforced against more property than necessary to satisfy the rent claim, could not be asserted against property removed from the rented premises for more than 30 days, and would be inferior to mortgages or liens that attached before the goods were brought on the premises. I would now add my understanding that these mentioned refinements were not treated by the Court as being issues in the case, and they seem to have been used conjecturally to serve the Court to classify the landlord's lien as inchoate, with the resulting subordination in favor of the federal priority.

In the Campbell case,[32] decided by the Supreme Court in 1946, a previous state lien for unemployment compensation contributions was opposed by the federal priority. Here, the Court had to determine the width of its detour road, because the state's lien had been previously recorded, and was good against the world with certain exceptions not relevant. The Court went the whole way in subordinating the state's lien. First, the Court found defects in the state's lien. One defect related to the description of the property to which the lien attached. The state statute imposed the lien upon all personal property "used . . . in connection with his business". The Court held that this description of property was fatal because the property, as so described, was, in the words of the Court, "neither specific nor constant". Having put the state's lien into the category of being inchoate, the Court finally answered the effect of the state recording statute. On this point, all the Court could say was that, to permit the recording of the state's lien to overcome the federal priority, would be "in substance" to overrule the numerous decisions in which liens no less specific and perfected have been held impotent against the federal priority.

This discussion of the birth and application of the Court's doctrine of inchoate lien, may cause you to wonder what kind of outstanding lien is strong enough to defeat the federal priority. If there is such a lien, I can advise you that the Supreme Court has not yet found it, that is, not after 1933.

Nor does the Supreme Court seem disposed to find it. Consider the opportunity given the Supreme Court where a state supreme court construes its own statute to create a lien that is not inchoate. This authoritative construction of the state law should be accepted by the U. S. Supreme Court. But the Court has been unwilling to accept it, so much so that in 1945, in the Waddill case,[33] the Court built a second detour road, consisting of making the state lien's actual legal effect a

[32]People of State of Ill. v. Campbell, 329 U.S. 362, 67 S. Ct. 340 (1946). In this case the doctrine of inchoate lien received its fullest elaboration.

[33]U.S. v. Waddill, Holland & Flinn, 323 U.S. 359, 65 S. Ct. 304 (1945).

"federal" question. Thus federalizing the question enables the Supreme Court to re-examine other courts' decisions, including their construction of their own statutes, and to render final decision. Under this second detour, final decision has not yet produced a single instance of agreement with a state court's holding that a lien was not inchoate.

Perhaps you are thinking—won't a previous mortgage defeat the federal priority? For over a century and a quarter the Court held that such mortgages did defeat the federal priority. In reaching this result, the Court clearly disregarded any distinction between mortgages in lien or title theory states.[34] However, in a mischief-making paragraph in the Maclay case,[35] which was previously mentioned, the Court itself raised the question whether the holding of the old mortgage cases is to be applied in jurisdictions where a mortgage upon real estate is a lien and nothing more. The Court has raised the same question still later,[36] but has never answered it, that is, after raising it in 1933. Apparently, the repose created by the older cases is still undisturbed as to previous mortgages in title theory states.

The survival of a previous mortgage in a lien theory state may be related, it seems to me, to another question, namely, will a specific and perfected lien defeat the federal priority? If you have not been perplexed up to now, this question will likely put you in that condition. It seems incredible that a specific and perfected lien would not defeat the federal priority. If it would, this should go far to make a previous mortgage safe. The Knott case,[37] in 1936, was explicit in saying that a specific perfected lien alone bars the priority of the United States. But this view did not last for long. With the priority statute waxing in strength at the hands of the Court, we find the Court showing determination to keep open the question whether a specific and perfected lien would bar the federal priority. As an example, ten years later the Court said that its statement in the Knott case "was not intended to settle the problem . . .".[38] The current position of the Court is that it has never decided whether the federal priority is overcome by a fully perfected and specific lien.[39] As long as the Court considers this question to be open, I fear it serves as a constant threat to previous mortgages in lien theory states.

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[34]Savings & Loan Society v. Multnomah County, 169 U.S. 421, 42 L.Ed. 803 (1898). For classification of the lien and title theory states, see Tiffany, Real Property, 3rd Ed., Section 1380.

[35]People of State of N.Y. v. Maclay, 228 U.S. 290, 53 S. Ct. 323 (1933), and text at note 27.

[36]U.S. v. State of Texas, 314 U.S. 480, 485-6, 62 S. Ct. 350, 352-3 (1941).

[37]U.S. v. Knott, 298 U.S. 544, 56 S. Ct. 902 (1936), and text at note 29.

[38]People of State of Ill. v. Campbell, 329 U.S. 362, note 10 at 370, 67 S. Ct. 340, 345 (1946).

[39]People of State of Ill. v. Campbell, 329 U. S. 362, 67 S. Ct. 340 (1946); U.S. v. Gilbert Associates, 345 U.S. 361, 73 S. Ct. 701 (1953).

The recent emphasis on the matter of inchoate lien is completely at variance with the Supreme Court's approach and action for a century and a quarter. Although the Court has not rejected the great deliberation of the early cases that the federal priority neither is a lien nor partakes of the character of a lien, nevertheless the question arises as to what has happened to Chief Justice Marshall's vigorous admonition that the no-lien distinction is "always to be recollected". The language of the priority statute has not changed. No broader will of Congress is involved. Ample light was afforded by the early cases. No reason for departure is discernible, and yet, in the last 25 years, without the aid of Congress, the Supreme Court has built detour roads around the priority statute. Along these detour roads is a judicial ambush with a time bomb which, so far, has exploded outstanding interests of third parties when the federal priority arose. After the explosion, the lone survival of the federal right means that the property of the third party has been taken by the Court.

Recurring to the remark that the Supreme Court's action under the priority statute is the precursor of its action under the general tax lien statute, we now turn to the latter.

The general tax lien statute, commonly known as Section 3670,[40] dates from 1866, and it has undergone amendments. Its essence is that, for any unpaid tax, there is imposed a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to the tax debtor.

The federal tax lien, being entirely statutory, the general rule is that the lien is not to be enlarged by construction.[41] Shortly, we will see how this rule has fared in the Supreme Court in the matter of taking a third party's property for federal taxes of another.

The story around three Supreme Court cases will reveal the various judicial roads. These roads consist of the old road, and, as you will suspect, the detour roads, they being three in number.

The old road and the first two detour roads appear from a consideration of the Security Trust case,[42] decided by the Supreme Court in 1950. This being the pioneer case and the leading case, suppose we look at some details. Three events occurred in this sequence: an attachment lien, recording of a federal tax lien against the owner of the property, and, last, judgment obtained by the attaching creditor. The federal tax lien statute says nothing about inchoate liens, but nevertheless the Supreme Court inquired whether the attachment lien was inchoate. And it concluded that the attachment lien was contingent or incho-

[40]Now 26 U.S.C.A. 6321.
[41]See LeLancy v. City & County of Denver, 185 F. 2d. 246, 253 (10 Cir., 1950).
[42]U.S. v. Security Trust & Savings Bank, 340 U.S. 47, 71 S. Ct. 111 (1950).

ate. This conclusion was, in part, based on a novel kind of speculation, for the Court said numerous contingencies might arise that would prevent the attachment lien from ever becoming perfected by a judgment awarded and recorded. But this speculation was in the teeth of the fact, as the opinion itself states, that a judgment actually had been awarded and recorded. The actuality of judgment caused the Court to at least consider the doctrine of relating the judgment back to the date of the attachment lien. And the Court refused to apply this doctrine, saying that it would "operate to destroy the realities of the situation". Having put the right of the attaching creditor into the category of being contingent or inchoate, what was to be the effect of this as against the federal tax lien? The effect was, of course, subordination. You will naturally ask, why? The answer is that the Court extended its inchoate lien doctrine under the priority statute into the federal tax lien statute. On this matter of extension, all that the Court said was:

> "In cases involving a kindred matter, i.e., the federal priority under Rev. Stat. Section 3466, it has never been held sufficient to defeat the federal priority merely to show a lien effective to protect the lienor against others than the Government, but contingent upon taking steps for enforcing it. People of State of Illinois, ex rel Gordon v. Campbell, supra, 329 U.S. 374, 67 S. Ct. 347. If the purpose of the federal tax lien statute, to insure prompt and certain collection of taxes due the United States from tax delinquents, is to be fulfilled, a similar rule must prevail here. Accordingly, we hold that the tax liens of the United States are superior to the inchoate attachment lien of Morrison, and the judgment of the District Court of Appeals for the Fourth Appellate District is reversed."

The result of applying "a similar rule" was to build a detour road around the statute, whereby a federal tax lien is superior to a state statutory lien which, although prior in time and binding upon the tax debtor's property, is "inchoate" at the time the federal tax lien arises.

You will recall that around the priority statute the Supreme Court built a second detour whereby the first was reinforced by making its application a "federal" question. This second detour was also adopted by the Supreme Court in the Security Trust case.

Thus, without the aid of Congress, again the Supreme Court built two detour roads, this time around the general tax lien statute. Again, along these detour roads is a judicial ambush with a time bomb which, so far, has exploded outstanding interests of third parties when a federal tax lien arose. After the explosion, the lone survival of the federal right means that the property of the third party has been taken by the Court.

The second detour, of federalizing the question, was most helpful to the Supreme Court in the Security Trust case because, in order to find inchoateness, the Supreme Court had to disregard the state court's construction of its own statute in the very case under review[43] and resort to another construction by the state court, but in an earlier and different case. This clash between two high courts—federal and state—is another example of the inchoate doctrine working out badly in practice. This clash had occurred under the priority statute but it was the first example under the tax lien statute. Among other examples, I would mention the Vorreiter case,[44] decided by the Supreme Court of Colorado in 1957. There, the Government was seeking to subordinate a statutory mechanic's lien, and this is reminiscent of the Colotta case. The Supreme Court of Colorado considered that to agree with the Government's position would mean pulling down the structure of property law of the state, which the highest court of the state refused to do. However, the Supreme Court of the United States reversed summarily,[45] merely citing the Security Trust case.

It is interesting to observe the state of the law prior to the Security Trust case, which, you will recall, was decided in 1950. One commentator has given this vivid portrayal:

> ". . . Thirty cases in the lower courts had denied the supremacy of the 3670 tax lien over antedating rival liens without investigating inchoateness. In applying the rule 'first in time, first in right', these courts had treated the federal tax lien the same as any other legal lien having no special priority. Since none of these cases was brought to the Court's attention in any brief, or mentioned in the opinion, the Court may not have realized how far Security Trust departed from the traditional interpretation of section 3670."[46]

In 1954, the Supreme Court nearly returned to the old road. In the New Britain case,[47] the Court considered a fundamental question as to whether federal tax liens have superiority. This question took the Court to the fundamental source—the will of Congress. The Court found that Congress had failed to expressly provide for federal priority in section 3670, and also the Court expressed its belief that Congress, when it enacted section 3670, had in mind the cardinal rule, enunciated by Chief Justice Marshall in 1827:

> "The principle is believed to be universal, that a prior lien

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43209 P. 2d. 657, 659, saying that the attachment lien was "perfected".
44307 P. 2d. 475.
45U.S. v. Vorreiter, 78 S. Ct. 19 (1957).
46Kennedy, The Relative Priority of the Federal Government: The Pernicious Career of the Inchoate and General Lien, 63 Yale L. Journal 905, 924-5 (1954).
47U. S. v. City of New Britain, 347 U.S. 81, 74 S. Ct. 367.

> gives a prior claim, which is entitled to prior satisfaction out of the subject it binds, . . ."

This is the basic order of time rule, which the old road applied, and which, incidentally, was applied by your Supreme Court in the Colotta case. Up to this point, the Court found and applied the will of Congress. The result clearly appears in the Court's concluding sentence, a part of which reads:

> "Thus, the priority of each statutory lien contested here must depend on the time it attached to the property in question. . ."

If the Court had stopped here,[48] it would have returned to the old road. But the Court added these further words: "and became choate". The tremendous significance of these three added words is that the Court did not return to the old road, but remained on the first detour road which it had built in the Security Trust case in 1950.

The New Britain opinion affords a remarkable contrast in the will of Congress and the will of the Court. In construing the statute, the Court found that a federal tax lien was given no superiority. This absence of superiority was attributed to the will of Congress. The qualifying doctrine of choateness, however, was not attributed to the will of Congress. It is perfectly clear that choateness represents the will of the Court, and thus constitutes action by the Court in its assumption of the role of a third legislative chamber.

As if you have not heard enough of Supreme Court detours, there is still one more, a third one, in the tax lien area, and it is very important. It was built this year, in the Ball case.[49] A little historical background is helpful. Until 1913, the federal tax lien was in all respects a secret lien. In that year, and again in 1939, Congress amended the general tax lien statute to protect specified interests of third parties arising before a federal tax lien is filed of public record. The protected interests are "any mortgagee, pledgee, purchaser or judgment creditor". The amendments are cited as section 3672 (a),[50] and they are known as Congressional filing protection. It was under this section that the Supreme Court decided the Ball case.

Until the Ball case, all cases decided since 1950 had involved non-contract rights. The Ball case, however, involved a contract right. In the first case of its kind to come before the Court, a bare majority subordinated a pre-existing assignment of money, as collateral security; this subordination being in favor of a federal tax lien against the assignor, which tax lien was not in existence when the assignment was

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[48]For another near stop, see the revelation in U. S. v. Albert Holman Lumber Co., 208 F. 2d. 113 (5 Cir., 1953).

[49]U.S. v. R. F. Ball Const. Co., 78 S. Ct. 442 (1958).

[50]Now 26 U.S.C.A. 6323.

made, but arose subsequently. Once more, you will promptly wonder, why the subordination? Here is the relevant part of the majority opinion:

> "Per Curiam. The judgment is reversed. The instrument involved being inchoate and unperfected, the provisions of § 3672 (a) —do not apply". (Followed by citation of the Security Trust and New Britain cases).

Four Justices dissented on extended opinion by Mr. Justice Whittaker.

You will readily agree that the majority revealed very little about their process. Speculation is therefore hazardous, but I will venture one man's view, briefly.

The key to what the majority had in mind consists of the qualities of "inchoate and unperfected".

Why did these qualities prevent application of the Congressional protection? There are no such words in the Congressional protection. The answer seems to be that the Court was extending its "inchoate" lien doctrine. On this basis, the extension was an extraordinary step. The inchoate lien doctrine was developed, in the tax lien area, under the statute imposing the tax lien, § 3670. The Ball case, however, did not involve this statute: it involved the statute, § 3672 (a), whereby Congress created filing protection as to specified interests of third parties. It is one thing, and going far, to elevate the federal lien by subordinating inchoate interests. It is quite another and different thing, and going much farther, to use the inchoate concept to subordinate interests which Congress has expressly protected and protected in language that makes no reference to the matter of inchoateness. By apparently taking this extraordinary step, we have another instance of the Court, without the aid of Congress, building a detour road—this time and for the first time, around the filing protection that Congress had built.

Another question about which you will wonder is, what made the assignment "inchoate and unperfected"? There is nothing more than the majority's statement that this was so—a bare conclusion, without explanation except for the citation of the Security Trust and New Britain cases. The citation of the two cases suggests enlightenment to be found therein. The expected enlightenment, however, was nonexistent to four Justices. They analyzed the same two cases and vigorously assert "they are not in point nor in any way controlling", and "they do not in any way support the Court's decision here". So, whatever enlightenment in the two cases appeared to five Justices, in no way whatever appeared to four Justices.

The minority did not leave in the dark the matter of "inchoate

and unperfected". They discuss various points, from which they conclude:

> "In these circumstances, I think it is clear that the assignment was in legal effect a mortgage, completely perfected on its date, in all respects choate, and valid between the parties; and inasmuch as it antedated the filing of the federal tax liens it was expressly made superior to those liens by the terms of § 3672 (a)".

From this statement of the minority we see that they considered the assignment to be a mortgage. So did the courts below.[51] Although the majority did not classify the assignment, it could be that they did not disagree with the mortgage classification.[52]

In this view of the Ball case, it is clear that the Court has taken an outstanding third party contract interest, and it could be that that interest was a mortgage.

The long and short of this history is that, in taxation, the rule is the statute—the will of Congress.[53] For 139 years under the priority statute, and for 84 years under the general lien statute, the Courts found no will of Congress that outstanding third party interests in property of the Government's debtor be subordinated in favor of the federal right subsequently arising. No broader will of Congress existed when, in 1933 and in 1950, the Supreme Court detoured around the statutes by launching the doctrine of inchoateness, which is an exotic labyrinth. Without the aid of Congress, and in pursuance of the Court's assumption of the role of a third legislative chamber, the Court has created a judicial ambush. That ambush, so far, has had a time bomb which exploded outstanding interests of third parties when the federal right arose. After the explosion, the lone survival of the federal right is that the property of the third party has been taken by the Court. Finally, in 1958, this taking occurred in the face of express Congressional protection. The legal result is to give the Federal Government a greater interest in the debtor's property than he, himself, possesses. The economic effect is the equivalent of making the third party pay the federal taxes of another. The will of Congress is not in doubt, but it must be reasserted in form that will remove the Court's detour roads.

Mr. John Satterfield of Jackson then introduced Mr. Charles S. Rhyne of Washington, D. C., who delivered the following address.

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[51] 239 F. 2d. 384 (5 Cir., 1956), affirming on opinion below in 140 F. Supp. 60.

[52] This view is not inconsistent with the Court's own general characterization of a similar assignment: "But here the transfer was as collateral security. It was therefore a mortgage of the goods and the returns." Conard v. Atlantic Ins. Co. of N.Y., 26 U.S. 386, 447, 7 L.Ed. 189, 215.

[53] Bull v. U. S., 295 U.S. 247, 259, 55 S. Ct. 695, 699 (1935).

LAW FOR WEAPONS IN RESOLVING DISPUTES BETWEEN NATIONS

*Charles S. Rhyne**

On May 1, just recently, by Presidential proclamation, we celebrated "Law Day—U.S.A." The sole purpose of this program was to refresh in the minds of our people the extent to which the entire culture which we so proudly call the American Way of Life is built around the concept of freedom under law. Engaged as we are in the current great battle for the minds of men which seriously threatens the very survival of individual freedom, the need to clearly recognize and realize the potential role of law as a substitute for weapons as the decision mechanism in international disputes stands as a great challenge to the legal profession.

The vigorous activity of the organized bar in promoting "Law Day—U.S.A." has been a wonderful experience. The great force unleashed by the concentrated effort of our profession made May 1, 1958, one of the most significant and meaningful nation-wide celebrations in our history. For through hundreds of local, state and national programs, our people have taken a tremendous initial step toward publicizing, for all the World to see, the most essential ingredient in our way of life—the rule of law.

Never in all history has any joint effort of the organized bar exceeded that which took place on "Law Day—U.S.A." Lawyers, judges and law teachers joined forces to offer the 28,000 high schools, colleges, civic clubs, and associations, speakers to talk on law and what it has meant and can mean to America. These programs were planned and executed with an enthusiasm unparalleled and unsurpassed in all bar organization history.

Governors and more than 1,000 mayors released proclamations stressing the great significance of "Law Day—U.S.A." Senators, Congressmen and other public officials added endorsements and laudatory comments. More than 100 lay organizations cooperated in making "Law Day—U.S.A." the most meaningful day in legal history. Newspaper stories, editorials, coverage in articles in major magazines such as "Life" and "Time", nation-wide radio and TV coverage of speakers, and public service "spot" announcements all combined to insure that maximum public attention focused on the idea and ideals of "Law Day—U.S.A." And I firmly believe that the result of this great cooperative activity has been to successfully launch the most important program ever undertaken—the task of selling the rule of law as the only means of securing a lasting peace.

*President of the American Bar Association, Washington, D. C.

In the outer space-satellite competition the Communists can make boastful claims. They can do likewise with respect to atom and hydrogen bombs and missles. But they dare not even suggest individual human freedom.

In putting his finger on human freedom as the ideal we offer to the World, President Eisenhower in his Proclamation of "Law Day—U.S.A." has flung out as a challenge the achievement of our system of government, to which the Communists have no answer. If the Communists meet our President's challenge and offer the people behind the Iron Curtain individual human rights and freedoms, that freedom will destroy the basic principles of Communism.

When we talked about justice under the rule of law on May 1st, its absence behind the Iron Curtain was apparent to all. When we talked about freedom under law, Hungary was forcefully recalled in the minds of men. And when we talked, as we must continue to talk, about peace under law—peace without the bloodbath of war—we made a cogent appeal to the foremost yearnings of all peoples everywhere.

To me the ultimate weapon—the decisive weapon—in the cold war fight for the minds of men is a convincing presentation of what individual freedom under law really offers to mankind. Our Country constitutes the greatest example of that freedom and its meaning. But we have never yet used or expressed that concept of human freedom in a clear vision which all men can comprehend. As the cold war grows hotter with the "hot" weapons stalemate, we must step up our propaganda of truth with individual freedom under law as the ideal we offer for mankind's salvation. What better way could this be done for us? "Law Day—U.S.A." has thrown the spotlight of the World upon us and that concept, and the rule of law was and always will be its own "best evidence" of its priceless value.

We have, through "Law Day—U.S.A.", taken the first step on the road to peace. But freedom has never been free, and we have a long way to go before we can reach the great goal of the universal rule of law. However, if civilization is to survive in the space era, law and reason must replace weapons as the ultimate "decider" of disputes between nations. That is the thesis I am here to present for your consideration.

One must concede that weapons must maintain peace and remain as the ultimate "decider" until the mechanism for peaceful settlement of disputes between nations under the rule of law is developed and accepted. That such development and acceptance cannot come dramatically and be achieved overnight is also conceded. The use of law to replace weapons in the international arena must go through many growing or formative stages before the idea can function as it should and

must. But when the alternative is the destruction of the Free World, the costs of success become immaterial.

Let us begin by focusing upon the broad picture of the World in which we live. The miraculous technical and scientific achievements of our day have created unprecedented peril from abroad and growth and change at home. Distance is now almost meaningless as rapid transportation and communications have shrunk nations to neighborhoods. Our era has witnessed such achievements as flight faster than sound, satellites in space, the splitting of the atom, miracle drugs and other rapid and turbulent changes in the scientific, economic and social fields almost too numerous to name or to evaluate under prior standards and experience. The whole pattern of our existence is being reshaped at an undreamed of pace.

This in capsule form is the background picture against which I would like to discuss with you a readjustment of our thinking so as to take a new approach to the all-important problem of disarmament and peace to meet the needs of our people in the space era. No one can deny that the number-one problem of our day is how to achieve and maintain a lasting peace. Certain it is also that never before has its solution been so imperative. A generation that has achieved so much heretofore deemed nearly impossible should not be dismayed by these past failures but in fact be spurred on by the challenge of our times to achieve this great goal of peace.

We are engaged in an ever-accelerating arms race with Russia, and we must win this race for supremacy in capacity to destroy—on that point, I find no disagreement in Washington or elsewhere. It is recognized that peace in today's World can only be maintained by our winning the arms race and by our keeping on winning it even though this requires billions upon billions of dollars and a great economic drain upon our Nation. No one can or will quarrel with the fact that 64% of the proposed new budget goes for national security—in fact the only quarrel is that the amount may be too small. But a World divided into two mighty armed camps is no pleasant future to envision. The peril from such a situation is obvious. History teaches that every arms race has ended sooner or later in war. We must therefore conclude that war with Russia is as certain as tomorrow's sunrise unless a formula or mechanism can be developed to maintain peace other than through arms. It is such a formula or mechanism which the rule of law offers, with persuasion and reason replacing weapons in the all-important international dispute arena. We cannot be saved from the holocaust of war by science or weapons alone.

As we listen to the roar of current history it is absolutely clear that we must learn to live together or see our civilizations go up in the

senseless devastation of war. The atomic and hydrogen bombs, the Sputniks, Explorers and Vanguards, and the recent Russian accusations that our Strategic Air Command is threatening her boundaries which we, of course, have hotly denied, have set everyone's nerves on edge. The realization that hot war, regardless of who is right or wrong, may well result in mass extermination has attuned the people of the World to an overwhelming desire for peace which is probably stronger than any such desire in all history. There is a common realization that under present conditions every man, woman and child will be in the front line trenches if the holocaust of world war explodes. This most urgent desire to prevent war thus offers a unique and unparalleled opportunity to develop the legal machinery that is essential for peace with the overwhelming support of worldwide public opinion. Never have the people of the World needed or demanded leadership on the issue of peace in a more concerted way. Either we furnish that leadership or someone else will.

"Law" exists now in some form in all nations. It is a universal term which all people understand. "Justice" and "law" connote innate fundamentals of fairness embodying the wisdom of the centuries. They are so understood by all peoples. The average person is not learned in the law, but the idea of justice under the law is to him very real. We need not then so much to acquaint the people of the World with law but to strengthen and use it in an area where it is little used today. Of all human institutions, law has the best historical claim to satisfy the need for peace and order. Law could offer the long sought common denominator for the creation of a method for the settlement of disputes between nations short of war. I firmly believe that law offers the best growing point toward order in a disordered World and the best path to disarmament and peace.

The most important public service open to our legal profession today is, therefore, the opportunity to mobilize the prestige and the power, the sanity and the skill, the judgment and the judicial temperament of the lawyers of the World in behalf of the goal of peace under law. We must build upon the experience of the past and the possibilities of the present to insure a peaceful future. To do this we lawyers must evaluate World law and develop new international legal machinery which will maintain essential national sovereignty, yet still provide for peaceful settlement of disputes between nations under the rule of law.

Disarmament conferences have been held down through the centuries, but no agreement resulting from such a conference has ever contained a successful formula to maintain peace. The best evidence of this is the fact that every disarmament conference or agreement has been

followed sooner or later by an arms race—then war. My study of the conferences and agreements of the past 100 years reveals that the reason they have failed was an inherent inability to devise a method for weighing armed might, so that all participants in such conferences and agreements would always feel that they were treated fairly. In essence this means treated equally.

The formula here presented does not contain this inherent defect, as under it all nations would be on a basis of *equality before the law.*

Are there reasons why nations should not be on a basis of equality before the law? I think not. There are perhaps some disputes to which present legal principles cannot be applied, but we of the legal profession have always developed new law to meet the needs of new problems. Our creative capacity should not be paralyzed now by the constant crisis in which we live, but it should be in fact spurred on to ever greater achievements. We must not allow law, legal procedures and legal tribunals to continue to lag behind the needs of the World in this vital field of settlement of disputes between nations.

And so it is that on the vast new frontier of the international community, disputes previously settled by the bloodshed of a war must now be settled by tribunals of justice. The International Court of Justice is perhaps the best known but the most unused existing tribunal of justice for the decision of international disputes. It has decided only an average of slightly more than a case per year since its creation in 1945. This situation indicates that as presently operated it may be inadequate and need changes to make it more acceptable, effective and useful.

The statute creating this Court allows it to sit—in its discretion—all over the World and in chambers of three or more judges. So far it has sat only at The Hague. The inaccessibility of the International Court and lack of knowledge of its jurisdiction, procedure and precedents are major reasons why it is not used by nations to settle their disputes. This Court should make known its willingness to sit elsewhere than at The Hague. The entire Court, or even a chamber of the Court, should sit rather constantly at United Nations headquarters in New York, for example, so that its advisory jurisdiction would be used more than it is now, and law would move more to the forefront in the deliberations of the United Nations.

Just think of the possibilities for calm and considerate use of law in this Court in such disputes as Suez, border incidents such as that between Spain and Morocco, and similar controversies now fought out in the arena of power politics and backstage diplomacy, or by armed might. Public opinion, which forced an end to the use of arms in Suez, could—if properly and justifiably directed—so crystallize as to require use of this Court, or of other such tribunals, and force reluctant

nations to take their disagreements there for decision.

Nations which have been accustomed to settling their disputes by hard bargaining, with little regard for justice or law, will begin to realize that it is to their advantage in the long run to submit their disputes for decision by impartial judges under the rule of law. The idea of the supremacy of intellect over physical violence should ultimately be decisively accepted and put into practice by mankind. Thus on a gradual basis our goal can become a reality. Let the free nations of the World agree on a plan to snuff out war among themselves before the next step of tackling Russia. Let us offer this plan for settlement of disputes under law in the courts as the Free World's path to World peace. If we are not willing to take the lead, we cannot expect others to follow.

"World Government", which will not and should not arrive in the foreseeable future, is not a part of the picture I paint. Such a government has inherent defects similar to those of disarmament agreements. This idea of peace under law envisions law which can grow out of the enlarged use of law by the World Community, and does not require any "super" or other World legislative body.

No plan for peace is worth mentioning unless it takes Russia into account. And Russia could not be expected to favor a plan for peace under law and justice. But this plan can capture the minds of the uncommitted peoples of the World for its sponsors and leave Russia naked of friends. Even Russia does not envision such nakedness as desirable—that is the reason for her constant propaganda efforts. To launch this plan—unlike a disarmament agreement—we do not need her, nor do we need to trust her word. She can hurt only herself by her failure to cooperate. Russia's often dishonored signature is worthless on a disarmament or any other agreement, but here only actions would count and all could evaluate those as we go along developing peace under law.

The history of the rise and fall of nations and civilizations is the history of the rise and fall of ideas. Among all the contending ideas which have fought for the minds of men since the dawn of history, the concept of individual human freedom has been outstanding. On this concept, which embodies the Natural Law, which was the heart and core of Magna Carta, which is the spirit and guiding light of our Bill of Rights, we can build with every confidence that it is a foundation not of sand but of everlasting rock.

An idea can be more powerful than any atom; and an idea whose time has come is too powerful to deny. Our task is to see to it that the "time" of the rule of law as decider of international disputes arrives before atomic annihilation overtakes us.

Mankind stands at the cross-roads of one of the great dramatic

and decisive moments of history. One road can lead to war and annihilation or, what is worse, the slavery of Communism. The other road can lead to peace and freedom under law.

As a concrete program I suggest the following plan of action:

1.The State Department, which now has no group or section concentrating solely on law as a replacement for weapons, should create an entirely new section staffed with experts whose sole and exclusive function would be to concentrate on law as a program capable of creating a "break-through" to achieve and maintain peace. This "break-through" is not only possible but absolutely essential. The mere knowledge that our government is making a serious effort in this regard would revive the hopes of peace-loving peoples throughout the World.

2. Intensified effort to achieve such a "break-through" should be the organized bar's major project and the lawyers in our Country should be urged to emphasize individually the importance of international law and of the development of a rule of law in international affairs. They should think about it, talk about it, write about it, and work on the problems themselves on a constant basis, as their ability and circumstances permit. "Law Day—U.S.A." is a start in the right direction. It will help to provide the essential foundation of crystallized public opinion in support of the rule of law in the international community. And this program should be expanded to reach the legal profession all over the World and convince it to further the same objectives. By common effort the legal professions of all nations can succeed in establishing and maintaining peace under law.

3. Every law school in America should make international law a required course, and teach that knowledge of international law is an essential to a successful legal career in the shrunken World in which we now live. We should contact law schools all over the World and urge them to do likewise.

4. All government agencies should further the use of law to the greatest possible extent in all international contacts and in particular should seek, and take every opportunity for, progress along the road that leads to the substitution of law for weapons in any and every field of international interest, from law to guarantee World investments, to the protection of national boundaries, and to the settlement of all international differences.

5. The United Nations and all other international agencies should be urged to bring law, legal procedures and legal methods to the forefront in all deliberations, and particularly by making more use of the International Court of Justice and its advisory jurisdiction.

6. The lawyers of America should unite in urging removal by the United States of the present reservation which makes inapplicable to our Country the compulsory jurisdiction of the International

Court of Justice, to the end that we as a Nation will accept the jurisdiction of that court in all international disputes in the future.

I sincerely believe that the combined brain power of lawyers can create and achieve as greatly as our scientists in meeting the needs of the World today. From its inception to the present zenith of its power our governmental machinery has been in large part conceived, formulated and operated by lawyers. Now is the time for leadership in a broader and more difficult area. Let us use our talents in taking the broad vision of a formula for peace under law herein presented and making it a reality in the World Community. As lawyers, we should be proud that our profession is afforded this opportunity to render such a magnificent service to mankind. No greater challenge exists for any profession. No greater public service can be performed.

Mr. Charles A. Carter of Jackson presented the Report of the Taxation Committee. No action was necessary on this report.

Mr. Orma R. Smith of Corinth presented the Report of the Resolutions Committee. Upon motion and second this report was adopted.

Mr. Breed O. Mounger of Tylertown was nominated by Mr. W. S. Henley of Hazlehurst for the office of President of the Mississippi State Bar, and was elected unanimously.

Mr. Hugh Clayton of New Albany was nominated by Mr. R. A. Darden of Jackson for the office of First Vice-President of the Mississippi State Bar, and was unanimously elected.

Mr. J. A. Travis of Jackson was nominated by Mr. Hayes Callicut of Jackson for the office of Second Vice-President of the Mississippi State Bar, and was elected unanimously.

Mr. Gibson Witherspoon of Meridian was nominated by Judge Lester N. Clark of Hattiesburg for the office of delegate to the House of Delegates of the American Bar Association, and was elected unanimously.

The convention then chose as the site of its 1959 meeting the Buena Vista Hotel, Biloxi, Mississippi.

The following Commissioners were elected:

District 1—Cason Rankin, Tupelo

District 2—George E. Morse, Gulfport

District 3—Sidney Hurdle, Holly Springs

District 4—William C. Keady, Greenville

District 5—Burris O. Smith, Philadelphia

District 6—Harvey Fitzpatrick, Natchez

District 7—Sherwood W. Wise, Jackson

District 8—Edmund A. Wilson, Morton

District 9—Ellis B. Bodron, Vicksburg

District 10—T. K. Holifield, Meridian

District 11—J. W. Dulaney, Jr., Tunica

District 12—James Finch, Hattiesburg

District 13—Victor J. Ford, Raleigh

District 14—Gordon Roach, McComb

District 15—J. P. Patterson, Monticello

District 16—William J. Threadgill, Columbus

District 17—C. Sidney Carlton, Sumner

District 18—Kalford C. Ratcliff, Laurel

The Fifty-Third Annual Convention of the Mississippi State Bar then adjourned sine die.

PROCEEDINGS OF THE TWENTY-SECOND ANNUAL MEETING

OF THE

JUNIOR BAR SECTION

Held at Biloxi, Mississippi, May 29, 1958

The General Assembly of the Junior Bar Section was called to order at 1:30 P. M., May 29, 1958, in the Buena Vista Hotel, Biloxi, Mississippi, by Mr. John A. Travis, Jr., President of the Junior Bar Section.

The invocation was delivered by Reverend E. A. DeMiller of Biloxi.

An address of welcome was delivered by Mr. George E. Morse of Gulfport, and was responded to by Mr. K. Hayes Callicut of Jackson.

The first order of business was the consideration of the various committee reports.[1] Mr. K. Hayes Callicut of Jackson presented the Report of Activities of the Junior Bar Conference of the American Bar Association. Mr. Joseph Wroten of Greenville presented the Report of the Legislative Committee. Mr. Charles Clark of Jackson presented the Report of the Public Relations Committee. Upon motion and second all of the above reports were adopted.

The Junior Bar Section Committee on Code Study adopted the report of the Senior Bar Committee on Code Study. No action was necessary on this report.

Mr. Russel D. Moore of Jackson presented the Report of the Mississippi Law Institute Committee. Mr. James F. Noble, Jr. of Brookhaven presented the Report of the Committee on the Young Lawyers' Seminar. Mr. Edwin P. Connolly of Laurel presented the Report of the Committee on Unauthorized Practice of Law. No action was necessary on these reports.

President Travis then introduced Mr. Kirk M. McAlpin of Savannah, Georgia, Vice-Chairman of the Junior Bar Conference of the American Bar Association, who delivered the following address.

ADDRESS OF KIRK M. McALPIN

It is a great pleasure to be down here in Mississippi, to bring you greetings from the Junior Bar Conference of the American Bar Associa-

[1]All committee reports will be found in Appendix A.

tion. I am representing Bert Early, the present Chairman, of Huntington, West Virginia, and he and the other officers of the American Bar send their greetings to you.

I don't know that I have a whole lot to say as to what Bar Associations should do. That is generally what we try to do, is stimulate Junior Bar activities throughout the country as we go around here; but, since I have been to your Junior Executive Committee meeting this morning, and sat in here this morning, I think from here I am going to take a little example elsewhere of what the Mississippi Junior Bar is doing. It is definitely one of the leaders in the country in the Junior Bar work. I don't know but what probably we in Georgia modeled our Junior Bar after the Mississippi Bar. I know we got started after you did, and the framework is substantially the same, and, in talking with Jack last night, I believe we lifted your organization. I see also that where we go around and say "this should be an organization to stimulate younger lawyers for activities in the Senior Bar", you are far ahead of that. You have accomplished that and continue to do so. I think it is unique that your retiring President of the Junior Bar Section moves up to Second Vice-President of the Mississippi Bar. I also understand Junior Bar members are prominent on all the committees of the Senior Bar. So I am not going to waste a whole lot of time saying what you should do in Mississippi: you have done it. I am taking from Mississippi this example and carrying it elsewhere.

You are very fortunate in your distinguished John Satterfield of Jackson, for he is one of the most respected men on the Board of Governors and House of Delegates. I have seen him in action on the Board of Governors when I visited with that body in the various conventions, and he really is a credit to Mississippi and to the South. He always has excellent ideas and is a real yeoman at the task of improving the administration of justice.

In the Junior Bar you have had many leaders. I became acquainted with Mississippi in Boston, in 1953, when I happened to be in that town by mistake and there was in progress an American Bar meeting. To make a long story short, I was on the same floor with your Bob Nichols from Jackson, and he was delegate from the Fifth District—that means representing all the Southern States in this area of the Junior Bar Conference. He took me in hand, and we came around and went in his room and I met several of his friends, and I got started in American Bar.

Charlie Henley is presently serving as one of our National Vice-Chairmen of the Legal Institutes Committee, and he is on a very important committee, the Committee of 22 they call themselves, which has to do with the practical institutes out of Philadelphia and is con-

nected with the American Bar. Jack Travis and Josh Morse and his lovely wife Nancy have been prominent at the conventions, as has Hayes Callicut, and they are also on National committees. I am very pleased that Mississippi is so prominent in the Bar and I hope more of you will take an interest in the American Bar and follow the lead of these fine individuals.

I want to say a few words this afternoon primarily about what the American Bar has to offer, what the Junior Bar Conference is trying to do, what kind of organization we have, and also what programs we are following; but, more than that, what seems to be the challenge in the future, and what part the young men of today, the younger lawyers, can do.

First, let me say this, that at one time the American Bar may have been considered, as people thought, only for a very few. Mississippi has been one of the leaders in bringing forth a very high increase in membership during the last drive, and is continuing to do so. I think your state alone has shown that this concept, that the American Bar only represents a few, is completely wrong. You have gone out and brought in the grassroot lawyers.

The American Bar Center at Chicago has one of the greatest facilities there for the lawyer. It is a beautiful center. And above that, they are staffed with experts, have all of the various facilities. If you are writing a brief on such and such a thing, have to make a speech on legal aid, traffic courts, you write them. They can send you all sorts of material, and you can save yourself a lot of time. If you are working on a particular project, you want to put on a public information program in your state, or your particular town, you want radio scripts, some TV scripts, or you want some speeches to make to civic clubs, why waste a whole lot of time scouting around, trying to find all these things, when your American Bar Center has it there for you. Drop them a note, tell them what you want to do, and they will give you the information. The Junior Bar Conference has recently set up an Administrative Assistant. We have a boy taken out of Cumberland University, a number one man in his class, who is Administrative Assistant. He has an office there, and Jack and the other boys know their headquarters address and you drop him a note on anything you want, and he will send it to you or find out about it for you.

As I said previously, the membership drive that Mississippi participated in so successfully has shown the American Bar two things. One, there had been a feeling in the past that the American Bar Association wasn't for the indivdual practitioner. Secondly, that we needed to have a more representative organization, and in order to do that we should reach the grassroots lawyers, as I call them. We found

in the Junior Bar Conference, likewise that feeling existed, that only a few had various control of the Conference. Last year—I think it started in Dallas, when Jack was out there—it was decided that the Conference should be re-organized, so that the individual state would be the controlling body, and that decision has become a reality. It passed the Board of Governors and House of Delegates. In Los Angeles, this summer, Mississippi will have two delegates seated in assembly, and they will have equal voice with other states who also have two seats; and, therefore, we now have an organization, which, if you make it so, shall be representative of the attorneys in America. We are very pleased that we are returning this organization to the grass-roots lawyers.

Now, passing on just briefly to what we are doing. We have several programs going along. Mississippi, however, when you said you were going to take on this legal institute program, that, I think, is one of the finest things and makes a real contribution to the younger lawyer getting out of law school. We try to sponsor ideas of that nature, but as you said, there have only been two states, Connecticut and Florida, and now Mississippi, and I am sure Mississippi's program will surpass even the others. Those are programs that we cannot participate in, we cannot develop. That is for you: it came directly from Mississippi. We will be watching Mississippi's program, and we will disseminate that information to other states after its completion, to show other states what can be done, to show the lawyers that we are thinking of them, and that Mississippi is trying to do something for the young lawyer.

We have other programs going on. We had the public information program. As I said, we have much material we can make available to you. You have heard about the valuable traffic survey; that is, the civic clubs going into the traffic courts and, as I told you, going to the police court, as a visitor, not a violator; going to see what is going on in your traffic courts. We are trying to make an effort to prevent traffic fatalities, and try to make the public conscious of these various problems.

Well, you can go on and on about programs, but you have your own programs. You are far ahead of us on that. I say this, I am not an advocate of having a whole group of programs and projects merely to make a paper organization. I am so pleased to hear that the projects you reported on here had meat in them and you are reporting results, and I think that is important. If you have a half dozen, or four or five, activities bringing forth a finished product, it is a lot more important to do that, do a good job, and don't spread your shots with a dozen or two. In the American Bar, particularly in the Junior Bar

Conference, we are continuously eliminating all carry-over committees, and trying to devote our attention to where the present needs are today.

That brings me to, as I say, the one thing which I believe we are trying to emphasize, and I personally feel it is a challenge to our profession and is immediate, and that is having to do with the unauthorized practice of law. That, to me, is a very, very actute problem which, unless we, the attorneys, become aware of it, presents a danger to our profession. I say again, Mississippi has been a forerunner in that field, and I understand in Jackson only several years ago, you brought action against a half dozen Notary Publics who were making various and sundry legal deeds and wills, and you have always been vigilant and observant of the conditions. But, that is not true everywhere, and today we are experiencing this problem. I think that attorneys, as such, younger lawyers and older lawyers, must guard their ranks. We owe it first to the public, and that foremost, for our canons of ethics are founded on the protection of the public's interest. Now a lot of people say, and critical people, that when we make a step forward to protect the practice of law, we are merely doing it to gain an economic advantage and protect our own profession to that extent. Well, let's don't be naive, it does have that effect likewise; but, more important is that it is a two-fold situation. It is our duty to exercise a lookout to make certain the canons of ethics are preserved, so that the public at large receives legal advice from competent legal people.

Now this is no longer, it appears, a situation where we are dealing only with the individual Notary Public, a few people giving individual advice. It seems that we have a problem now in front of us which has gone beyond that. One phase, naturally, is the non-practitioner, a person who is not a lawyer but who holds himself out as an attorney, or who renders service which trespasses on our field. Secondly, we have run into a situation where corporations are now becoming more and more prevalent in every walk of the legal profession and are entering our fields, taking over our practice, and they themselves are engaged in the practice of law. Now you say, "Well, what is wrong with that? If they can do a better job than we can do, why not let them do it?" I say this: first, corporations as such, are not controlled by the ethical standards that we have. They have the power to solicit. They go out and hire the best attorneys and put them on their staffs, and yet they themselves render the service. Now this is a definite, and I say, a very important problem today. What is happening everywhere, is that people want security. Corporations are offering very attractive propositions. They are taking our bright boys out of the law schools, putting

them in their corporations, and they are going into the actual practice of law.

If you think I am merely using generalities, I can give you concrete examples in which this actually exists. Take the situation in Connecticut: many of you are familiar with those particular cases up there and have followed them. Two banks just recently had employed attorneys. They had their own attorneys in their Trust Departments, and had actually been appearing in probate courts, been returning inventories, making appraisals, and handling tax returns, appearing before various bodies, and doing everything that lawyers, as such, would do when representing banks and trust companies. Their answer was that they had their own attorneys who were members of the Bar; and, therefore, they were authorized to do this very thing. An action was brought against these two banks in Connecticut. The result was that the lower court denied the injunction. That is where the Unauthorized Practice Committee of the American Bar Association intervened, and filed an amicus curiae brief. Also the Bar, as such, in Connecticut, rose up and fought that case. A very important decision has just come out in which the Court reversed the trial court just last month, and held that banks cannot represent clients in probate, whether or not they are members of the bar. Second, they cannot do any work in the preparation of tax returns, which would be commonly understood to be the practice of law. This is, I think, a very important thing, because this is the problem we have with these corporations. When they say that we can't do something, they go to the General Assembly and get the law changed. The Supreme Court of Connecticut said the General Assembly cannot perpetuate through legislation any current bank practices which constitute illegal practice of law. Now there is a situation in itself, one place, Connecticut, where the move was made by the Bar Association. They received a good ruling there, but that has not been the case in other places.

In Colorado, where realtors and brokers were making out sales contracts and all other legal documents, the Court handed down a very disastrous opinion, which is a situation that I say should wake up the legal profession. The Court held that because the broker filled out forms, consummated sales on forms, the Colorado Supreme Court recognized that that act constituted the practice of law; but, they went on further and said, however, in view of the fact that these were standard forms, used constantly — this is the important phrase — the Court said the testimony shows without contradiction the practices sought to be enjoined are of at least fifty years uninterrupted duration. That, to a number of people, is quite startling. Unless the Bar wakes up, sees these things, we may find ourselves in similar situations.

There are other situations, some you couldn't even recognize or believe. One in Wisconsin just recently, where they advertised themselves as Law Incorporated, asking for subscriptions, membership $3.00 a month, which would furnish you civil and criminal insurance protection. You would pay $3.00 a month, and they would furnish you an attorney, furnish you with protection. The organized Bar in Wisconsin was successful in obtaining injunction there.

Out in California just recently, six labor unions, representing 21,000 members, advertised a plan whereby they would render legal aid, lawyer reference service, to their entire membership as part of the increased dues. Believe it or not, that was argued before a panel of lawyers at, I believe, Southern California. The conclusion was that it wasn't illegal to do that, and they were started on their way when the Unauthorized Practice Committee of the American Bar Association stepped in, quoting something back in 1950, and convinced them it was unauthorized practice of law. Needless to say, you can see how many people would have been affected by that, including lawyers in that area.

Another situation in Ohio: an "Institute," they call themselves. What it amounts to, a bunch of patent people got together an agency that will search titles, render opinions, everything, to members of this "Institute", concerning patent matters. They have brought injunction, and in that particular instance there is no ruling on it.

Just recently, in Illinois, the Brotherhood of Railroad Trainmen operated in 16 Regional Councils throughout the United States. If a man was injured, he was told by the Union Agent to go to one of the 16 regional attorneys; the attorney will pay the expenses of a Union man, an injured man, to his office one time. In Illinois, what happened, the Brotherhood of Railroad Trainmen asked for a declaratory judgment to legalize this legal aid plan for the benefit of their membership, and they said they had as much right to render legal aid as anybody else did. That case was brought before the Illinois Supreme Court, and the Court asked that a master be appointed to hear evidence in that case again. The American Bar Association heard about it, and they came in and filed an amicus curiae brief in there just recently. That case resulted in a favorable decision, to the effect that the plan did constitute the practice of law, and that they could not adopt such a plan.

Well, now, those are examples, and there are more and more of them every day. Only this morning, in *The New Orleans Times-Picayune* here is the caption, "Bond Firm Plan Throws Jeff Unit Into Confusion". What happens there—I don't know any of the personalities or anything about it, but just to show this is a realistic thing—Southern

States Securities Corporation made an offer. I quote, "the proposal would take the construction program out of the hands of the school board through measures which authorize the Southern States Securities to retain architects, attorneys, engineers, and even contractors to handle the project over the five-year term of the contract". Looks like that caught everybody off balance, because everybody was screaming and hollering around there, from what I can read in the paper. But, somebody did come up with this: "The Bar Association would never go along with the Board on a deal like that, in which appointment of attorneys and architects is done by a private concern." The District Attorney said he had only a "gist" of what was going on, but if the proposal provides for legal work and architects, he doubted its legality. There is what has happened, what is taking place. Things are improving, but we are not receiving the utmost cooperation in every respect with regard to some of the more current problems. That is not peculiar to Mississippi and Georgia, but exists in many states throughout the Union today. However, this points up very clearly, to my way of thinking, that the Bar Association is the only method by which we can become united in curtailing many of these particular evils. That is how the Bar Associations should serve. They should be the watchdog, be on guard. I imagine that situation which existed yesterday on that County School Board in New Orleans is a situation that will go immediately to the Bar Association. If our Legislators will not give us funds to operate, if they will not be sympathetic to our causes, if they think we only meet and have a good time, then of course they don't have the true facts. That situation exists in Georgia as here and other places.

You may ask, what do we do about particular things like this? I certainly am not one to tell you what to do in your state, but it just seems to me there are certain observations which have been made by others more learned than I, who have studied this problem, and might know some answers. My personal thinking on one issue is this: we should not over-specialize to the extent that we let our particular interest take us completely away from all other interests of the Bar Association and life in general. I think there is a tendency to get into specialization, to devote too much time to one particular area; that is, the area you are particularly involved in, which captivates your entire attention to the extent that you say, "Well, that's a problem there I haven't time for. It does not affect me. I am a tax specialist. That is something I am not concerned with." That, ladies and gentlemen, is a situation which must be guarded against. If we take that attitude, we will find these particular problems will move in everywhere until you and I are left by ourselves. We must keep our eyes open, be vigilant, recognize these problems. It is true that an organized bar can alleviate

them. Individually, we are not strong; together, we can be, if we are heading in the right direction.

Very briefly, here are some of the ways these things have been handled. When you run into a situation where an individual is going off into this particular area, first and foremost, the best approach is direct contact: *telling* him, not going down to the corner, drinking a cup of coffee with a bunch of other lawyers, saying "he's getting in our hair", this that and the other, calling a lot of names. Go straight to him and say, "This looks like the practice of law. What are you doing about it? Are you intentionally doing it?" or, "You are going too far." More often than not, problems are solved in that manner, and you work out a voluntary agreement with him. More important, a lot of associations, groups, are unintentionally going too far in advice and practice of law; not corporations, those particularly having lawyers on their staff, but individual groups. What has been suggested is conferences with those particular associations: your bar having a conference with members of their group, trying to work out a voluntary agreement. Naturally, you run into situations where they are going to hold tight, and you are going to hold tight. Well, needless to say, an injunction seems to be one of the remedies. That is only through the Bar Association.

Recently in California, only in January of this year, a suit for damages was brought against a Notary Public who drew a will. That will was not sufficiently attested, and it was denied probate. The beneficiary under that will, who ordinarily would have taken a substantial share, more than by inheritance, brought an action against that particular Notary Public and, in that particular case, was awarded judgment for the full amount she would have taken had that particular will been duly probated, the difference between what she received and would have received. The Court was faced with the very difficult problem of determining whether there was privity of contract there. The Court held, in that particular case, that the ends of justice demanded this particular verdict, irrespective of privity of contract. That seems to be an innovation. I imagine one or two of those and this problem will be sort of slowed down for awhile.

Now, I am very pleased that I had the opportunity of coming down to Mississippi to bring you this message. There are many problems facing you and other attorneys today, which you yourselves will have to look into. I have, as I say, pointed out this particular one, because it appears to me that we owe the duty to the public to maintain our profession in the fashion in which we want to be looked upon by the public. In order to do that, we must make the best representation to them; and, likewise, we must protect their interest. I think, in order to do

that we must bring these matters before the bar associations, keep organized, and try to convince members of the Legislatures in all of our states that we are serving a real purpose. If we continue to work toward these goals, a great deal more is in store for the legal profession.

I have certainly enjoyed being here today. I hope I can get back soon.

Mr. B. Stirling Tighe of Jackson presented the Report of the Committee on Legal Aid. Upon motion and second the report was adopted.

President Travis then reported on the accomplishments of the past year and the functions of the various committees.[1]

The next order of business was the election of officers. The following were duly elected:

Mr. K. Hayes Callicut of Jackson, President.

Mr. James F. Noble of Brookhaven, Vice-President.

Recommended to the Senior Bar as Second Vice-President:
Mr. John A. Travis, Jr. of Jackson.

Executive Committee:

Central District:
Joe Wroten, Greenville
Charlie Clark, Jackson
George Rogers, Vicksburg

Northern District:
Jay Gore, Jr., Grenada
J. E. Boone, New Albany
James Hugh Ray, Corinth

Southern District:
E. C. Ward, Natchez
Harold Robert Barber, Jr., Gulfport
Eaton Lang, Gulfport

The Twenty-Second Annual Meeting of the Junior Bar Section was then adjourned sine die.

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[1]All committee reports will be found in Appendix A.

APPENDIX A

COMMITTEE REPORTS – SENIOR BAR

REPORT OF THE AMERICAN CITIZENSHIP COMMITTEE

The American Citizenship Committee is a relatively new committee in the Mississippi State Bar. It is charged with presenting a citizenship program for the furtherance of our American Citizenship Ideals, and is especially directed to the upper four grades of high schools of Mississippi. In order to implement this program, it is recommended that the Chairman of this Committee appoint a sub-chairman from each of the Circuit Court Judicial Districts, which sub-chairman shall then appoint a District Committee composed of one member of each county bar association within the District. The Committee will circulate and distribute valuable information from the American and State Bar Associations, and shall coordinate their activities with local civic organizations interested in the guidance of the youth of our state in maintaining our American way of life.

REPORT OF THE ATOMIC ENERGY COMMITTEE

Because of its wartime importance, development of atomic energy remained a military matter until after the end of World War II. The Atomic Energy Act of 1946 transferred responsibility for atomic development to a newly formed government agency, the Atomic Energy Commission. Because of military considerations, however, atomic development remained an absolute monopoly under this act.

In 1954 Congress decided that the time had come to permit American industry to proceed on its own initiative with the development of commercial atomic power. The Atomic Energy Act of 1946 was revised. Among other provisions, the new act—the Atomic Energy Act of 1954—permitted industry for the first time to engage in the development and construction of its own atomic power plants. The Atomic Energy Commission was given the authority to license organizations to undertake these developments.

You may be surprised to learn that 19 firms and institutions within the State of Mississippi have been licensed by the Atomic Energy Commission to use radioisotopes.

In addition to the above, the two investor owned electric utilities operating in Mississippi are participating in major atomic power research and development projects.

Naturally enough these scientific advancements bring problems for lawmakers and lawyers alike. Your committee has been called upon to study these questions. It has done so and reported to the President of this Association.

The possibility of radiation-caused illness and injury presents a problem in the field of workmen's compensation.

It is our best judgment that such disease or injury is in the nature of an "occupational disease" not covered by our present Workmen's Compensation Law.

On the other hand, when the exposure to radiation is only a contributing cause of an illness, such as in cancer, sterility, etc., it is probable that our present law affords full coverage of such aggravation. The committee has considered what treatment should be afforded those cases where there is a manifestation of the occupational disease but no actual disability or loss of earning power. It is thought that in such cases while full medical treatment should be afforded it is probable that no compensation would be rightfully due.

Questions will undoubtedly arise as to what special consideration should be given to serious effects, such as sterility, shortened life span or genetic damage, which cause no wage loss ordinarily compensable as an occupational disease. Your committee is of the opinion that such would constitute speculative damage which is a normal hazard of the occupation.

Safety standards in industry will be of the utmost importance. There will be workers who have received the maximum permissible exposure to radiation and cannot receive further exposure. Safety standards must, if possible, prevent this from taking place, since inevitably some of these persons will eventually need x-ray treatment.

There will be cases of persons who have received the maximum permissible exposure to radiation and, because of that, are required to find other employment where they cannot make full use of their particular skill. Undoubtedly, some benefit will have to be worked out for such persons based on loss of wage earning capacity.

Problems will arise because the manifestation of radiation caused occupation disease is often delayed and there is a cumulative effect of overexposure to radiation. This will cause such questions to be raised as to which employer should be liable and in which state the liability arises where the employment has covered more than one state. In all probability, a practical solution would be to make the last employer liable based on loss of wage earning capacity. Where the employment is in several states it will probably be practical to make the employer in the last state liable.

Questions as to notice will arise since the manifestation of the disease may not occur until long after the exposure to radiation. Undoubtedly, it will be necessary to require that notice be given within a certain period of time after the first distinct manifestation of an occupational disease has arisen.

In all probability it will be necessary for the state to require that property damage insurance for third parties, covering the risks of nuclear incidents, be available by either requiring that policies covering such risks continue to cover such risks or, where policies do not cover such risks, require that they be covered. This will probably be necessary if such matters are not already covered.

Questions of causation will unquestionably arise. As far as we are able to tell these questions can be answered by presently existing tort law.

Undoubtedly, some special treatment will be indicated as to limitations of action. This is true because with radiation a person may not know for a long period of time that he or certain of his property has been exposed to radiation or to radiation sufficient to be harmful and the manifestations of injury to himself or damage to his property may not occur until long after the exposure to radiation has occurred. Just what special treatment will be indicated is, of course, not known at this time.

As far as theories of liability are concerned, it is our best judgment that the common law of negligence is adequate.

These and other questions will require continued study and thought. It is our recommendation that the Bar of the State of Mississippi keep in close touch with the developments in this field and that it be prepared from time to time to make such recommendations to the State Government as may be found appropriate.

BUDGET AND FINANCE COMMITTEE

After a careful study of the audit of the accounts and financial records of the Mississippi State Bar for the past fiscal year, which ended May 15, 1958, the Budget

and Finance Committee recommends for adoption the following budget for the fiscal year, 1958-1959:

Office Expense	$1,700.00
Commissioners' Expense	1,500.00
Junior Bar Section	1,000.00
Committee Expense,—to be allocated among the committees by the Commissioners	1,000.00
Travel allowance for Study Committee	350.00
National Conference on Uniform State Laws	200.00
Expenses of delegates to Judicial Conference	150.00
Secretary's Salary, as fixed by Commissioners	4,200.00
Expenses of Secretary to A.B.A. Convention, and to Mid-winter and Regional Conferences	500.00
Miscellaneous or Contingent Expenses, such as bank charges, exchange, with-holding charges, etc.	250.00
Extra office help, stenographer, as fixed by Commissioners	2,700.00
Mississippi Law Journal	4,000.00
Dues, National Conference of Bar Presidents, National Conference of Bar Association Secretaries and Special Liaison Tax Committee of the Southeastern Region of the A.B.A.	75.00
President's Expense	250.00
Board of Bar Admissions	1,500.00
TOTALS	$19,375.00

As will be seen, the Committee is recommending an increase of $300.00 in the Secretary's salary, an increase of $300.00 in the stenographer's salary, and an increase of $25.00 for the National Conference of Bar Presidents, etc., all as heretofore fixed by the Commissioners. The Committee is also recommending the elimination of the Annual Pre-Convention Expense Item of $200.00, and a reduction of $500.00 in the Committee Expense Item, a reduction of $150.00 in the Secretary Expense Item for attending convention and conferences, a reduction of $750.00 in the Mississippi Law Journal Item, and a reduction of $500.00 in the Board of Bar Admissions Item, in order to bring the Budget within the scope of the anticipated receipts and revenues of our Association. Otherwise, the Budget is the same as the Budget adopted last year.

The Committee makes mention of the fact that the next Budget Committee will be faced with the imperative duty of recommending further reduction in the budget items, unless in the meantime, some plan of voluntary contribution from the members is promulgated, or unless some relief is granted by the Legislature, including an increase in the annual dues. The Committee understands that the Commissioners are giving this matter careful study and that some resolutions may be presented by the Commissioners to the Convention with reference thereto, so as to prevent the necessity of further curtailment of the splendid work of the Association.

REPORT OF THE CODE STUDY COMMITTEE

Your Study Committee presented to the 1958 Session of the Mississippi Legislature fourteen bills for introduction, all of which had received a vote of approval by the State Bar. These bills, and the action taken thereon by the State Legislature, are as follows:

ITEM I. Amending Sections 1519 and 1848 to provide for entry of judgment in

vacation and to provide for form of summons in Circuit Court.
H. B. 211—Died on House Calendar
S. B. 1560—Died in Committee

ITEM II. Act to provide for Mental Examination of Person charged with crime if mental condition is questioned.
H. B. 210—Died on House Calendar
S. B. 1569—Recommitted—Died in Committee

ITEM III. Amending Section 9901 to provide that Sheriff and Tax Collector may back assess property for only a period of seven years.
H. B. 209—Died in Committee
S. B. 1568—Passed (Indefinitely postponed by House action)

ITEM IV. Amending Section 3962 to provide that Chancery Court may in vacation allow fees for appraisers in estates of deceased persons.
H. B. 208—Passed S. B.
S. B. 1561—Passed both Houses and approved by Governor

ITEM V. Act to provide Chancery Court with jurisdiction of proceedings in certain cases, define powers of the Court and to fix venue.
H. B. 193—Died in Committee

ITEM VI. Act to provide means by which appellee may cause transcript of evidence to be made part of record on appeal in certain cases.
H. B. 207—Passed S. B.
S. B. 1562—Passed both Houses and approved by Governor

ITEM VII. Amending Section 1640 to provide for securing transcript of reporter's notes in case of successive trials and to dispense with necessity of bills of exceptions in new trials.
H. B. 206—Passed S. B.
S. B. 1563—Passed both Houses and approved by Governor

ITEM VIII. Act to prescribe a method of reviewing determination of administrative agencies.
H. B. 205—Killed in Committee
S. B. 1564—Passed Senate—Died in House Committee

ITEM IX. Amending Section 1296 to allow defendant to bring in new parties as cross-defendants within the discretion of the Court.
H. B. 320—Killed in Committee

ITEM X. Act to establish procedure for pre-trial conference in certain courts.
H. B.—Died on Calendar
S. B. 1565—Passed Senate—Died on House Calendar

ITEM XI. Amending Section 2735 to clarify causes for divorce and establish procedure for annulment.
H. B. 321—Died in Committee

ITEM XII. Amending Section 1876 to provide additional methods of serving notice.
H. B. 203—Died on Calendar
S. B. 1558—Killed in Committee

ITEM XIII. Amending Section 834 to provide how estates in two or more persons may be created.
H. B. 202—Died on Calendar—Passed S. B.
S. B. 1567—Passed both Houses and approved by Governor

ITEM XIV. Amending Section 428 to provide when guardianship shall cease.
H. B. 201—Passed S. B.
S. B. 1568—Passed both Houses and approved by Governor

Your Committee believes that those bills which did not become law deal with changes in our procedural law which are much needed, and we, therefore, recommend that they be presented to the next session of the Legislature for further consideration.

Several bills were studied by your Committee which deserve further study by the next Study Committee of the Mississippi State Bar. They are listed in the minutes of the meeting of the Committee held on October 17, 1957.

REPORT OF THE COMPLAINTS COMMITTEE

During the past fiscal year, 18 complaints have been made involving members of the Mississippi State Bar. In handling these matters, 65 letters were written by the Chairman of the Committee, and he received 102 letters or copies of letters. Approximately 72 letters were written by the other four members of the Committee and approximately 113 letters or copies of letters were received by them. It would, perhaps, be interesting to you to know that last year there were 22 complaints and the year before that, 20.

Of these 18 complaints, 8 have been closed and 10 are still pending. Of the 10 remaining complaints, 4 do not appear to be very serious and will probably be closed at an early date. The other 6 are pretty serious and we have recommended to the Commissioners that a complete investigation be made and, if warranted, that appropriate disciplinary action be taken by the State Bar Association. These 6 involve:

(1) Alleged failure to account to client for moneys collected on judgments.

(2) Information that attorney has been convicted of a crime involving moral turpitude.

(3) Alleged wrongful misappropriation by attorney of $2,000.00 received by attorney for client.

(4) Alleged wrongful misappropriation of about $28.00 by attorney.

(5) Alleged failure of attorney to account to client for $35.00 collected from debtor. Also alleged failure to file suit after "suit papers" had been signed and payment of advanced court costs made. Complaint states that despite attorney's assurances that suit had been filed she has learned that suit was not filed and that claim is now barred by statute of limitations and that attorney refuses to refund the money.

(6) Numerous charges of unethical and illegal conduct, including forgery and perjury and wrongful demands for suit fees and receipt of such fees after the accounts had already been collected and failure to remit amounts collected for several years thereafter.

As you know, at the 1956 Annual Convention, the By-Laws were amended so as to provide for the appointment of a Committee on Complaints, consisting of a chairman (who shall be a Commissioner) and four members thereof. This has lightened the burden to some extent and, we believe, resulted in a more efficient, prompt and thorough handling of all complaints. But, inspite of this, it is still a rather difficult job. A little knowledge and experience in the handling of such matters would be of great help. We, therefore, recommend that in the future, if possible, the President appoint one or two members who have served the year before or during previous years.

We further recommend that the State be divided into five districts and that one member of the Committee be appointed from each district and that all com-

plaints be first referred to the Chairman of the Committee and that the Chairman handle the complaint if it involves an attorney in his district and, if not, that he refer same to the member in whose district the attorney resides. This would enable the Chairman to keep up with all complaints and would result in a more efficient operation.

REPORT OF THE CONFERENCE OF LOCAL BAR ASSOCIATIONS

As you know, the Conference of Local Bar Associations was established two years ago as a section of the Mississippi State Bar with the approval of the Board of Commissioners. Since that time all of its activities have been undertaken with the express approval of the Commissioners and under directions given at the annual convention last year.

During the past year our emphasis has been on law office organization and management, which we thought was a logical follow-up from the previous year and was the outgrowth of excellent work done by Breed Mounger and his committee the previous year in preparing the fee basis booklet, which members of the Bar received.

Our emphasis during the coming year, as adopted by annual meeting yesterday, will be on the theme of the lawyer in society. Those of you who studied the report of the Professional Economics Committee, and particularly the Public Relations Survey as made in the Forrest County area, will realize the need for us dwelling on that subject to some extent. That, likewise, was the principal subject which was presented at the nine District conferences this year, which were held through the State.

We also conducted this year, in cooperation with, and under the joint sponsorship of the University of Mississippi Law School, a Seminar on April 16-17 on the subject of law office operation and management. Though the total attendance was somewhat disappointing, the entire law school student body attended, and we feel we had a very successful and beneficial seminar.

If you studied the first part of the Professional Economic Survey, you noticed that our expenses in the past ten years as lawyers in the state have risen from about 20% to almost 40%, while our gross income has not increased anything like that proportion — I believe about 55%. Our take-home pay is not going up as it should, and the answer apparently is not more business, but more attention to our offices and to the management of our offices.

The Conference has three recommendations which it desires to bring to the Mississippi State Bar at this time. The Conference recommends that the Mississippi State Bar take the necessary action to confer upon the President of the Conference of Local Bar Associations the status of Third Vice-President of the Mississippi State Bar, in order that the Conference President may work more closely with the program of the Mississippi State Bar. That particular recommendation will require legislation because under the Bar Act, under which we operate, we have only two vice-presidents.

The Conference recommends that the Mississippi State Bar appoint liaison committees of the State Bar to other associations with National associations with which the American Bar Association has affected agreements protecting the practice of law, in order to implement such agreements at the state and local level, that is for the working out and making effective in Mississippi these agreements with organizations such as the accountants, whose agreements have been entered into between their national organization and the American Bar Association.

Third, the Conference recommends that Judges and Commissions be furnished with the calendar of bar meetings and institutes to be held throughout the year, and urged to recognize the work of the organizations of the Bar by not setting cases for trial in conflict with the Bar program.

REPORT OF THE JUDICIAL ADMINISTRATION COMMITTEE

There are two matters which received attention from the Judicial Administration Committee of the Mississippi State Bar which merit your consideration. The first related to the securing of raises in salary for the Judiciary of Mississippi, and the second relates to a change in the manner of selecting jurors in the trial of cases, both civil and criminal, in the Circuit Courts of this State.

I know that I speak the unanimous feeling of all members of the judiciary when I say that we are truly grateful to the members of the Mississippi State Bar who, because of their work with the Legislature, made possible the passage of the salary increase bill.

With reference to the proposed changes in the manner of selecting jurors in both civil and criminal cases in the Circuit Court of Mississippi, each member of the Mississippi State Bar has been furnished with a mimeographed copy of the proposed legislative change. The Circuit Judges who have instituted these changes, with the approval of the members of the bars of their respective district, unanimously stated that the members of the bars in their district would under no condition return to the old system of selecting jurors in Circuit Courts. Specifically, the proposed change will materially reduce the time necessary in selecting jurors and, therefore, will facilitate in the trial of cases. No injustice will be done either the plaintiff or the defendant nor the state and the defendant in the trial of Circuit Court cases. The attorneys will not be faced with the embarrassment of publicly challenging preemptorily any juror.

REPORT OF THE LAWYERS BUSINESS AFFAIRS COMMITTEE

A survey by your committee recognizes the problem of business affairs to be a personal, individual one. Of course in firms, it is a lot better, because you have to keep a good set of books; but, in the individual practitioner's office you find the greatest failure. Now, as long as that fellow is wallowing around down there, he is pulling on you, sapping your profession. You can speak of high sounding honor and public relationship, but nothing in the world succeeds like success itself. If you can bring that fellow up, you will have done a wonderful job. Individual practitioners who keep trust accounts have no control over the trust account being kept or controlled. When fees are paid them, they put them in their pocket, take some to the bank—utterly no control. They don't know whether they are losing money or making money, having no idea as to their cost of operation. This can be considerable, your cost of doing business. Your income has gone up, but your profit has not gone up as much as your cost. I don't know how many of you know that. Most of you know what it is costing you to do business.

We found less than 5% of the lawyers kept mileage travel records.

Briefly, and concluding the report of your committee, it is our conclusion that to correct the improper conduct of business in the lawyer's office the problem must be approached from this viewpoint. It is something you are not going to be able to reach from the State Bar level, but your conference of local bar associations

has done a wonderful job along this line.

The recommendation of this committee is that the State Bar lend every support necessary or required through your conference of local bar associations next year to the work they have done on law office work and management, so that improved systems may be installed in as many law offices as possible in the State of Mississippi.

REPORT OF THE LEGISLATIVE COMMITTEE

The Study Committee presented twenty-one bills for the consideration of the Legislature. The bills were introduced in both the House and Senate early in the session. The Study Committee discussed each bill before a joint meeting of the House and Senate Judiciary Committees. Only six of the recommended items were finally approved, being:

SENATE BILL NO. 1561—An act to amend Section 3962, of the Mississippi Code of 1942, so as to provide that the Chancery Court or Chancellor in Vacation may fix and allow reasonable fees for appraisers in the estates of deceased persons.

SENATE BILL NO. 1523—An act to amend section 1765, Mississippi Code of 1942, to exempt from jury service as a personal privilege every citizen over sixty-five years of age.

SENATE BILL NO. 1562—An act to provide a means by which an appellee may cause a transcript of the evidence to be made a part of the record on appeal in cases where the appeal is taken without inclusion in the record of the evidence adduced on the trial.

SENATE BILL NO. 1563—An act to amend Section 1640, Mississippi Code of 1942, to provide for securing a transcript of the Court Reporter's notes in case of successive trials and to dispense with the necessity of bills of exceptions where new trials are granted.

SENATE BILL NO. 1566—An act amending Section 428, of the Mississippi Code of 1942, to provide when guardianship shall cease.

SENATE BILL NO. 1567—An act amending Section 834 of the Mississippi Code of 1942 to provide how estates in two or more persons may be created.

The Conference of Local Bar Associations and the State Bar Commissioners approved and charged this Committee with the responsibility of securing an increase in salaries for the Circuit, Chancery, and Supreme Court Judges. This important matter consumed the greater part of the efforts of this committee. It looked as if no increase would be secured, but finally the Legislature and Governor approved an increase for the Circuit and Chancery Court Judges from $9,000.00 to $11,000.00 per annum, effective January 1, 1959; the Supreme Court Justices from $12,500.00 to $13,500.00 per annum, the Chief Justice from $13,500.00 to $14,250.00, and the Presiding Justice from $12,500.00 to $13,625.00, effective July 1, 1958.

In conclusion, the Committee feels that if the Lawyers would unite in all worthwhile recommendations, even read and study same, much progress could be made. However, with the Bar divided on the recommended changes, we cannot expect the Legislature to assume our responsibilities.

REPORT OF THE MEMORIAL COMMITTEE

On September 9, 1957, Memorial Day Services were conducted for members of the Mississippi State Bar who departed this life during the year 1956-57. The

Supreme Court Room was appropriately decorated with beautiful flowers. The Chairman of the Committee presented the following resolution.

"Sunset and evening star,
And one clear call for me!
And may there be no moaning of the bar,
When I put out to sea,
But such a tide as moving seems asleep,
Too full for sound and foam,
When that which drew from out the boundless deep
Turns again home.
Twilight and evening bell,
And after that the dark!
And may there be no sadness of farewell
When I embark!
For tho' from out our bourne of Time and Place
The flood may bear me far,
I hope to see my Pilot face to face
When I have crost the bar."

WHEREAS, the Supreme Judge of the Universe has seen fit, in His infinite wisdom, to summon from our ranks a number of our most loyal and distinguished members since our last Memorial Service in this Supreme Court chamber, on September 10, 1956; and

WHEREAS, we are proud of the privilege that is ours to assemble here for this Memorial Service and pay tribute to our departed members; and

WHEREAS, they were strong links in the fine fellowship of our association, and their lives were dedicated to the high and noble purposes of our profession, and in their daily lives and in their practice, they defended and protected the rights and privileges of the rich and poor alike, and tried always to uproot a thorn and plant a flower where flowers would grow; and

WHEREAS, they indeed, were exemplars of that lowly Nazarene, who went about the highways and byways teaching: "Let him who would be a leader among you, be servant of all." Indeed, they were servants of their clients, of their communities, of their state and of their nation. Our world is a better place in which to live because of the noble contributions they have made; and

WHEREAS, some reached their three score and ten, others departed this earthly scene in their prime, but all of them, like the monarchs of old, descended into the arena of death unafraid and fully armed with good deeds done for their fellowman.

And now, as we read the names of esteemed departed members of the Bar, we light a candle, symbolic as it is of the eternal Heavenly light which appeared as their earthly lights went out. May they rest in peace!

DECEASED MEMBERS

Hon. J. M. Alford, Tylertown
Hon. J. W. Backstrom, Leakesville
Hon. Grady Bates, New Orleans
Hon. T. L. Bauer, Natchez
Hon. Lee H. Bird, Monticello
Hon. W. H. Livingston(Judge) Prentiss
Hon. J. W. Loving, West Point
Hon. Luther Manship (Judge) Jackson
Hon. L. K. McIntosh, Moss Point
Hon. Robert E. Nason, Ackerman
Hon. P. H. Bowdre, Hernando
Hon. Gerald W. Chatham, Hernando
Hon. A. Jerry Coleman, Vaiden
Hon. J. E. Cooper, Purvis
Hon. R. L. Corban (Judge_) Fayette
Hon. C. J. Craggs, Cleveland
Hon. J. A. Cunningham, Jr., Booneville

Mrs. Ruth M. Deterly, Jackson
Hon. Carl E. Fankhauser, New Orleans
Hon. J. M. Forman (Judge) Indianola
Hon. Eugene Gerald, Leland
Hon. J. D. Guyton, Kosciusko
Hon. H. G. Hall, Jackson
Hon. Claude V. Hathorn, Columbia
Hon. J. W. Hatten, Sumrall
Hon. J. B. Hughes (Judge) Moorhead
Hon. Means Johnston, Greenwood
Hon. W. F. Latham, Quitman
Hon. C. M. Wright, Meridian
Hon. H. H. Parker, Poplarville
Hon. T. E. Pegram, (Judge) Ripley
Hon. John E. Perkins, Baton Rouge, La.
Hon. M. B. Porter, Moselle
Hon. O. B. Quinn, III, Columbia, Tennessee
Hon. S. G. Salter, Hazlehurst
Hon. Sam Richard Smith, Aberdeen
Hon. Alfred Stoner, Greenwood
Hon. Louey V. Tullos, Jackson and Shreveport, La.
Hon. J. D. Vollor, Vicksburg
Hon. G. S. Watson, Port Gibson
Hon. Edgar Webster (Judge) Memphis, Tennessee
Hon. Robert H. Wells, Jackson
Hon. Ray C. Whittaker, Jackson and New Orleans
Hon. James A. Wiltshire, Magnolia

THEREFORE, BE IT RESOLVED By the Mississippi State Bar in Memorial Session assembled in the Supreme Court chamber of the State of Mississippi on this, the 9th day of September, 1957, that we remember these, our departed members, for their virtue and service; and that we rededicate our own lives to the high purposes of our old and honorable profession, and that we express to the families and loved ones of our deceased members our deepest and sincerest sympathy, and pledge to them our help during the ordeal that always follows the passing of a loved one.

BE IT FURTHER RESOLVED That in order to place this Memorial Resolution in the archives of the history of our profession and to permanently record the names of these, our deceased members, that this Resolution be spread upon the minutes of the Supreme Court of the State of Mississippi and upon the minutes of the Mississippi State Bar, and that a copy be furnished to the family of each deceased member, and that copies be furnished the press.

REPORT OF THE EDITORIAL BOARD OF THE MISSISSIPPI LAW JOURNAL

General

The publication of the October, 1958, issue of the *Mississippi Law Journal* marked the completion of the twenty-ninth volume. With the publication of the December, 1958, issue, the editorial staff of the *Journal* will embark upon the thirtieth year of uninterrupted publication. At the present time the *Journal* is published four times a year during the months of October, December, March and May. The October issue is devoted exclusively to the publication of the proceedings of the Mississippi State Bar Association Convention and the roster of members of the Mississippi State Bar Association.

Symposium On Constitutional Convention

At the initial staff meeting of the editorial board held on September 23, 1957, publication plans for the 1957-58 scholastic year were formulated. It was then decided that the May, 1958, issue would be devoted to the then proposed constitutional convention, which, if called, would have convened in August, 1958. Plans were made to contact leading figures in the field of constitutional law and political science and request that they prepare articles for this issue. These articles were to concern recommended changes to the present constitution, the comparison of constitutional provisions of neighboring states, and the essential elements of a modern constitution. These problems were to be presented and treated from the intellectual rather than from the political point of view.

In an effort to insure the adequate coverage of the subject matter, tentative plans provided for the length of the May issue to be between 200 and 250 pages.

It was the desire of the editorial board to produce a constitutional handbook that could be employed as a reference by the delegates to the convention. The board felt that a valuable service could be rendered the State of Mississippi through this medium.

However, the subsequent action of the legislature in disapproving the proposed constitutional convention necessitated the cancellation of this symposium issue. The May, 1958, issue was, therefore, devoted to articles on various segments of the law and work submitted by the student members of the editorial board.

Future Plans

In addition to the possible reprinting of Volume II as was announced in the report of the editorial board submitted in June, 1957, our plans for the future include the publication of a cumlative index covering Volumes XX through XXX in October, 1959. An index editor has already been appointed and the compilation of the material is well underway.

A conservative estimate of the length of the cumulative index is 100 pages and the estimated cost of printing is approximately $1500.00. This expenditure will be in addition to the cost of the four regular numbers of Volume XXX.

It is presently planned to furnish this cumulative index to our subscribers without any charge, this, of course, being subject to change as financial necessity dictates.

Problems Presented by the October Issue

Due to budgetary considerations, it was agreed during the administration of Dean T. C. Kimbrough at the Law School that the editorial board should edit and condense speeches and committee reports submitted as a part of the proceedings of the annual Bar meeting, for publication in the October issue of the *Journal*. This practice has been employed annually by subsequent editorial boards since that time. Because of the steady increase in the length and in the number of speeches and committee reports presented each year, the effect of this practice has become more pronounced in an effort to prevent the October issue from exceeding its pro rated share of the funds allocated for the publication year.

This procedure was practiced in preparing the material that was submitted for publication in the October, 1957, issue. Each of the numerous committee reports forwarded to us was edited and condensed. However, in all instances the editorial board attempted to preserve the original thoughts and intent of the reporting committee. It is estimated that had the material been published as received by us, without the exercise of editorial license, the committee reports *alone* would have required 76 *additional* pages. This increase in the number of pages would have resulted in a corresponding increase in the cost of printing in the sum of $798.00 which would have increased the total cost of the October issue from $1468.30 to $2266.30.

Due to the fact that this previously established editing policy, which was followed as usual this year, has been the subject of more and more complaints because of deletions made in various speeches and committee reports, it was suggested by the editorial board, in the report presented to the Commissioners of the Mississippi State Bar Association on December 7, 1957, that the present policy be re-examined. This suggestion resulted in the formulation of a new policy. The President of the Mississippi State Bar Association has appointed a committee to edit the October issue of the Journal. This committee will consist of (1) the President of the Mississippi State Bar Association, (2) the Chairman of the Law Journal Committee, (3) the Faculty Advisor of the Law Journal, and (4) the Editor of the

Law Journal. This new policy will be in effect for the publication of the October, 1958, issue.

The Coming Year

In response to requests from members of the Bar, during this coming year the *Journal* plans to reprint, in pamphlet form, Justice W. G. Roberds' article, "Some Suggestions As to Oral Arguments and Written Briefs in the Supreme Court of Mississippi," which first appeared in Volume XVII, Number 3, October, 1945, *Mississippi Law Journal.*

It has been more than five years since the complete Rules of the Supreme Court of Mississippi were published, the last publication being in the December, 1952, issue of the *Mississippi Law Journal.* Since that time some changes have been made by the Court. There have been a number of requests for republication of these Rules. The plans are to publish the Rules, as revised, and with annotations to the decisions of the Supreme Court, including them as a part of the pamphlet mentioned above. So far as is known, the Rules have never been published in an annotated form and the editorial board feels that such a work would be of real and lasting benefit to the practicing Bar.

The Journal and the Mississippi Bar

The *Mississippi Law Journal* is the official publication of the Mississippi State Bar Association, and its primary purpose is to serve the Bar and its members. However, this relationship existing between the *Journal* and the Bar should not be characterized as a one-way affair, because of necessity it is a relationship out of which springs reciprocal duties and obligations. While it is true that the subsidy given the *Journal* by the Bar makes possible the *Journal's* physical existence, in order for the *Journal* to be classified as successful and to justify its existence, much more than mere pecuniary aid must be forthcoming. To adequately fulfill its purpose and obligations to the Bar, the *Journal* must receive support in the form of articles contributed for publication, suggestions and criticisms from the Bar, suggestions as to topics that should be treated in leading articles, and an understanding on the part of the Bar of the problems encountered in the printing of a professional publication such as the *Journal.*

The financial ability to publish is of little significance when there is an absence of suitable material to print. We, therefore, urge the members of the Bar to write and submit for our consideration material for publication in the *Journal.*

To better serve the Mississippi Bar, it has been the policy of the *Journal* to limit the material published to topics of local import and interest, rather than to those topics national or international in scope. It is felt that this policy is necessary in order for the *Journal* to realize its ultimate function, which is to print that material which is most advantageous and beneficial to the Mississippi Bar.

The *Mississippi Law Journal* is your publication, and it is our desire that you will aid us in making it more beneficial to the Mississippi lawyer. Its success is not dependent on the individual effort of the Law School or the Bar, but rather upon the combined and cooperative endeavors of both.

EXHIBIT "A" TO THE LAW JOURNAL REPORT
FINANCIAL REPORT OF THE MISSISSIPPI LAW JOURNAL
June 1, 1957 — May 14, 1958

Receipts

Balance Remaining 1956-1957 Bar Appropriation	$0000.00
Balance in Bank, May 31, 1957	2660.26
Appropriation, Mississippi State Bar	4750.00

Sale of Subscriptions	311.10
Sale of Back Issues	137.50
Sale of Volume I	50.00
Sale of Advertising	790.75
Refund on Insurance	33.62
Law School Student Assessments	572.00
Sale of Index	5.00
Miscellaneous Income	21.33
TOTAL RECEIPTS	$9331.56

Disbursements

Printing:		
Volume XXVIII, No. 4	$1468.30	
Volume XXIX, No. 1	1376.60	
Volume XXIX, No. 2	1591.00	
Volume XXIX, No. 3	1463.80	
Total Printing		$5899.70
Postage and Box Rent		146.65
Stationery and Office Supplies		130.87
Telephone Expense		141.10
Addressograph Expense — Mailing List		95.00
Page in Yearbook		50.00
Bar Convention Expense		36.55
Law Journal Certificates		2.09
Miscellaneous Expense		30.09
TOTAL DISBURSEMENTS		$6532.05
Cash on Hand, May 14, 1958		2799.51
		$9331.56

EXHIBIT "B" TO THE LAW JOURNAL REPORT
PROPOSED BUDGET FOR THE MISSISSIPPI LAW JOURNAL

Receipts

Balance in Bank, May 14, 1958	$2799.51
Appropriation, Mississippi State Bar	5000.00
Sale of Subscriptions	300.00
Sale of Back Issues	140.00
Sale of Volume I	50.00
Sale of Advertising	980.00
Law School Student Assessment	550.00
Miscellaneous Income	20.00
TOTAL RECEIPTS	$9839.51

Disbursements

Printing:		
Supreme Court Issue (Special)	$ 525.00	
Volume XXIX, No. 4	1600.00	
Volume XXX, No. 1	1500.00	
Volume XXX, No. 2	1500.00	

Volume XXX, No. 3	1500.00	
Total Printing		$6625.00
Postage and Box Rent		200.00
Stationery and Office Supplies		175.00
Telephone Expense		175.00
Addressograph Expense — Mailing List		150.00
Page in Yearbook		50.00
Miscellaneous Expenses		100.00
TOTAL DISBURSEMENTS		$7475.00
Cash on Hand, May 31, 1959 (Estimated)		2364.51
		$9839.51

REPORT OF THE MISSISSIPPI LAWYER COMMITTEE

The Mississippi Lawyer has enjoyed a very successful year from both a financial and editorial standpoint. Your committee feels that the publication has improved in its content and coverage of news of interest to the members of the Mississippi State Bar. The cost of the publication is defrayed by advertising; however, in the past the Mississippi Lawyer has received a special appropriation from the Bar to cover the additional cost of the edition mailed immediately prior to the annual Bar Convention. This edition carries the program and information on the speakers for the annual convention and is used primarily to advertise the convention. This appropriation in the past has been approximately $275.00, and was necessary in order that the publication would not operate at a deficit. This year the Mississippi Lawyer has not received this appropriation, and your committee is proud to report that the publication has actually made a profit for the year. Your committee feels that this is one of the few activities of the Mississippi State Bar to render a needed service to the Bar without cost to the Bar.

Your committee is proud to render the following financial statement:

THE MISSISSIPPI LAWYER FINANCIAL STATEMENT FOR 1957-58

Balance on hand as of June 1, 1957	$ 118.14	
Received from advertising	2,521.01	
Accounts Receivable	195.12	
Cash on hand	71.25	
TOTAL ASSETS		$2,905.52
Cost of Printing	$1,958.53	
Cost of Mailing	425.00	
Bank Charges & Miscellaneous	7.22	
TOTAL COSTS		$2,421.05
PROFIT FOR YEAR		$ 484.47

The Mississippi Lawyer is mailed each month to all members of the Mississippi State Bar; students of the School of Law of the University of Mississippi; students of the Jackson School of Law; advertisers and other interested parties; all State Bar Associations; and various law libraries.

Your committee feels that it is an imperative need of the publication to have more local coverage of the activities of the various county, district, state and other local bar associations. It is strongly recommended that the President of every local

bar association appoint one of its officers the duty of reporting regularly all activities of the local bar as well as the acts of its members that would be of interest to the Mississippi State Bar. This is the strongest recommendation your committee has to make in this report.

It is believed that the Mississippi Lawyer renders a real service to the Bar in disseminating important notices and interesting information. The Mississippi Lawyer has received some very favorable comments at the meetings of the American Bar Association and other legal functions. It is highly recommended that the publication be given the wholehearted support of the Mississippi State Bar.

REPORT OF THE PROBATE AND TRUST LAW COMMITTEE

The Committee on Probate and Trust Law of the State of Mississippi met in Jackson on October 22, 1957, in the office of the Chairman in the Plaza Building. There were present Walter D. Coleman of Natchez, Judge C. D. Williams of Yazoo City, Chalmers Alexander, R. L. Stainton, Warren Ludlam and your Chairman, W. E. Morse, all of Jackson.

There was a discussion of codification of Trust Laws of the State of Mississippi, and there was taken up the previous studies that had been made on the question and the former action which had been taken by former Study Committees which are contained in prior reports to the State Bar Association. Statutes of other states and constitutionality of the laws of the State of Mississippi were discussed. The fact that a great deal more wealth was being accumulated in the State with the better economic condition of the State created quite an interest in Trust matters and Trust Estates.

There was a discussion of statutes which permit fiduciaries to hold assets in kind which are received by the fiduciary for the benefit of the minor. A discussion was had also as to the relative provision of the Guardian or Executor, and of their inability to borrow for emergencies from those now provided for by statute.

There was a motion that Corporate Trusts who have made bonds either as guardians, executors or trustees, be permitted to reduce their bonds or eliminate the same where such Trust Officer was examined by the State through the Banking Department. Motion made, seconded and carried, that where an out-of-state fiduciary was appointed by Will or Trust Agreement that a Mississippi co-fiduciary be required to be appointed also.

There was a further discussion that estates be authorized to be closed in four months period instead of six months period.

Letters were written of the meeting to various members of the Committee and a copy sent to the Study Committee.

In view of the facts that all legislation must come up for general discussion at the State Bar Association before it can be submitted as being approved by the Bar Association, the Committee decided that there should be some way to by-pass this waiting period. For instance, where this Study group met in October, the Legislature would be and was in session in December, January, February, March and April. The proposed legislation could not be submitted at the past Legislature, but this meeting of the Bar Association would take up the recommended matters from the Committee. This Committee reported to the Study Committee, and it would then make its report. There would be new officers and new Committees as a result of the Bar meeting this summer. These new Committees would make their report to the Bar Associations in 1959, and the Legislature would not meet until 1960. This process is too cumbersome and will cause legislation to die on the vine. This Com-

mittee thinks that there should be some method to by-pass emergency legislation or legislation that is strictly remedial, and some authority should be given to the President and Chairman of the various Committees to authorize the Study Committee to make reports on such matters.

REPORT OF THE PROCEDURAL REFORM COMMITTEE

The Committee, through its chairman, recommended that three proposals be enacted into law at the next session of the legislature; that after a considerable amount of work and research by members of the Procedural Reform Committee, it prepared three proposals:

(1) An act to establish a procedure for a pre-trial conference in certain state courts.

(2) A proposal for taking of depositions for use in the courts of this state and regulating the use thereof; also, provisions for discovery.

(3) A proposal to keep the courts open at all times for the transaction of business.

A copy of each proposal will be mailed to all members of the Mississippi Bench and Bar within the next few weeks, in order that the members of the Bench and Bar may have ample time to analyze these bills before the next legislative session.

Only one bill was voted on and that was the bill for a pre-trial conference. This bill was unanimously adopted at the annual convention of the Bar at Biloxi. The other two proposals were so lengthy that it was decided best not to read them but to mail them to each member of the Bench and Bar for their approval or disapproval.

REPORT OF THE PUBLIC AFFAIRS COMMITTEE

The Committee on Public Affairs submits herewith two statements which have been adopted as expressive of the committee's position. It is hoped that the further dissemination of these statements will result in a wider understanding on the part of the Mississippi State Bar, and the bars of other states as well, of the crisis that confronts our nation in the matter of maintaining our system of constitutional government in its historical and proper perspective. It is ultimately the task of the lawyers of this country to halt the disturbing trend toward the centralization of all political authority in the Federal Government. With that worthy challenge before us, the committee commends to the Bar the following statements:

Resolution

WHEREAS, the President of the State Bar Association by authority vested in him by the Bar at its regular meeting, has appointed a Public Affairs Committee; and

WHEREAS, it is a duty of the Committee to call to the attention of the Bar and of the people the ever-present danger of the Communist menace, particularly insofar as it may threaten the people and institutions of our state; and

WHEREAS, the danger of the dissemination of Communist propaganda is a source of concern to this Committee;

THEREFORE, BE IT RESOLVED, that the membership of this Committee make a vigilant effort to acquaint themselves with any specific situation where such insidious and false doctrines may be advanced and offer their services to our educational, political, and religious leaders in an effort to insure that these false doctrines and theories may not be promoted in our state.

Be it further resolved that the members of the Bar help to inform the people of this country that it appears to be the purpose of the Communist Party and those advocating communism to gain a foothold in this country by the subtle and devious agitation of strife and unrest through minority propaganda and pressure groups. That they further serve to inform the people that the platform of the Communist Party in 1928 advocated:

(1) Mixing the races and abolishing all laws which resulted in segregation of the races.

(2) The abolishing of all laws which prevented inter-marriage of persons of different races.

(3) Abolishing all laws prohibiting Negro children from attending general public schools and universities with white children.

(4) Abolishing segregation of the races in the military services.

Be it further resolved that the members of the Bar serve to inform the people that the Communist Party and those advocating communism in the United States, have long advocated and worked for the passage of the so-called civil rights bill. That they inform the people that communism teaches anti-God and anti-Christ and, whether intentionally or not, the teachings of communism are being followed in the advocacy of mixing the races and abolishing segregation of the races in the schools, churches, and the military services.

Be it further resolved that a program of public information be encouraged through the members of the Bar to call to the attention of the people the dangers inherent in the communist conspiracy as it is manifested in its many subtle and insidious ways.

Be it further resolved that each and every member of this Committee is encouraged to secure the cooperation of other members of the Bar in carrying out the intent of this resolution.

GET THE SCHOOLS OUT OF THE COURTS AND GET THE ARMY OUT OF THE SCHOOLS

When the Supreme Court of the United States, on the 17th day of May, 1954, held that state laws segregating the races in public schools were unconstitutional, in that these laws violated the Fourteenth Amendment to the Constitution of the United States, a great many of the leading lawyers throughout this nation were surprised, and when the President of the United States ordered units of the Regular Army to Little Rock, Arkansas, to enforce an order of the United States District Court, the people throughout this nation were astounded.

The Supreme Court of the United States, by its decision in the school segregation cases, amended the Fourteenth Amendment in direct conflict with and in complete disregard of the method provided for amendments in the Constitution itself. It took from the people the power that they had, and without any authority and without any precedent, proceeded to amend the Fourteenth Amendment, and not only did the Supreme Court, without authority, amend the Constitution but proceeded to try to furnish the method of enforcing its amendment. The Fourteenth Amendment itself provides:

"*Section* 5. The Congress shall have the power to enforce by appropriate legislation the provisions of this article."

The Constitution of the United States is now susceptible of amendment other than by means of the processes provided for by the Constitution itself. Yet, nine men composing the Supreme Court of the United States, not elected by the people and holding no commission from the people, have arrogated to themselves the

right and power to act for Congress in carrying out that provision which gives to Congress alone the authority to provide legislation to enforce said amendment.

The decisions in the segregation cases have largely destroyed the effect of the Tenth Amendment and completely ignore the long established plan for the distribution of powers provided in the Constitution, thereby taking from the people the rights reserved in them by the Tenth Amendment. If the Supreme Court can re-write the Constitution to suit its own views on social questions, then it would appear that there is nothing to prevent the Court from re-writing the Constitution on any subject it sees proper.

We submit that the Supreme Court cannot justify entering the legislative field as it has done, on the ground that Congress failed to act under the provisions of the Fourteenth Amendment. No conditions have been set forth which provide any basis whatsoever for the Supreme Court to take over the legislative branch and proceed to make the law as made by the legislative branch. The trend of the decisions of the Supreme Court since 1954 makes it imperative that the legislative branch of our government assert its great power in the proper determination of the policy to be followed by the United States Government, and we now call upon the legislative branch to answer to the people these questions:

1. Has the Supreme Court the right and power to rule in every case where it conceives or considers that the Congress has made a mistake in failing to legislate?
2. Have the people of the United States decided to adopt the divine right of the Supreme Court to do as it pleases regardless of the will of the people?
3. Have we, the people, decided to abandon the affairs of our government which our Founding Fathers provided of checks and balances between the branches of government?

These are not idle questions. They are profound and go to the very foundation of principles of our government and to the very fabric of our political, economic, and social order in this country.

If the Supreme Court of the United States has the authority assumed by it in the segregation cases and in many other cases decided recently by it, then it would seem to follow that the Court by decree might declare the republic and the form of government set up by the Founding Fathers to be out-moded and substitute an entirely new form of government with some man of their choosing to be a dictator. This is an extreme illustration, but there are people who contend that any decision by the Supreme Court of the United States, whether it has a right to make such a decision or not, automatically becomes the "Law of the Land". We submit that no court has the power to make laws. That power is exclusively lodged with the legislative branch of our government.

GET THE SCHOOLS OUT OF THE COURTS

Not only has the Supreme Court of the United States usurped the power of Congress, but it has undertaken to substitute its order for those of the trustees of our schools. It has said by its action that courts are better qualified to run our schools than the trustees and have thereby deprived the people of the privilege of operating their schools as they see proper and have placed the operation of the schools in the courts. We submit that the legislative branch of our government should curb the powers of the Supreme Court of the United States and take our schools out of the courts and place the operation back in the hands of the people and the trustees of the schools, who are better qualified to operate the schools than any court.

GET THE ARMY OUT OF THE SCHOOLS

Our forefathers came to this country to escape tyranny. The President of the United States in September, 1957, sent units of the Regular Army to Little Rock, Arkansas, to enforce a civil decree of the United States District Court in violation of the law and the Constitution. Section 332, Title 10, U. S. C., among other things, provides that the President has no power to send the Army to any state except in cases of rebellion and in cases where the local authorities cannot control. On September 11, 1956, the President of the United States said to the nation publicly:

"In a place of general disorder, the Federal Government is not allowed to go into any State unless called upon by the Governor . . . That is the thing that keeps the Federal Government from just going around where it pleases to carry out police duties."

The Governor of the State of Arkansas did not call on the President of the United States to send the Army to that state, and yet the President sent a force of more than 1,000 men without any authority whatsoever and in violation of the law and in contradiction of his own statement to the public. The President of the United States also stated to a meeting of the Governors of the States at Williamsburg, Virginia, in 1957:

". . . those who would be and would stay free must stand eternal watch against excessive concentration of power in government."

This same President concentrated all of the military power of this government in Washington and sent the Army to Little Rock and took over a public school in violation of public policy, in violation of his solemn pronouncement and in violation of the Constitution.

This same President on July 17, 1957, said:

"I can't imagine any set of circumstances that would ever induce me to send Federal troops into a Federal Court, and into any area to enforce the orders of a Federal Court, because I believe that common sense of America will never require it. Now, there may be that kind of authority resting somewhere, but certainly I am not seeking any additional authority of that kind, and I would never believe that it would be a wise thing to do in this country."

Notwithstanding this solemn pronouncement that he had no authority and, that it was unwise, he did send the United States Army to Little Rock and did have the Army to invade the public school in that city and did use the United States Army to enforce a civil decree of the United States District Court.

Mr. Alfred J. Schweppe of Seattle, Washington, who was reared and educated in Minnesota, and is at present an Associate Editor of the American Bar Association Journal, has challenged the President's use of the United States Army to enforce a Federal Court order. Mr. Schweppe is an outstanding constitutional lawyer with wide experience. He is quoted in the press and in reputable magazines as follows:

"I have found no statute empowering the President to use troops to execute the marshal's duties in the event of the latter's liability to do so . . . If there is no such statute, the President would be acting beyond his powers. I have seen nothing in the press, moreover, concerning any effort of the United States marshal to enforce the Little Rock decree prior to the action by the President."

This is the solemn pronouncement of a disinterested outstanding lawyer from the Northwest stating that the President's action in sending the United States Army to Little Rock was illegal. Mr. Schweppe quotes from a decision of the Supreme Court of the United States growing out of President Truman's seizure of the steel industry in 1952:

"The President's power, if any, to use the order must stem either from an act of Congress or from the Constitution itself. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker."

From the decision of the Supreme Court of the United States itself, we find that the President of the United States in sending the Army to Little Rock invaded the legislative field.

The Attorney General of the United States, when the civil rights bill was being debated in the United States Judiciary Committee hearing on February 16, 1957, stated:

" . . . I do not know of any reasonable public official of any party or any branch of government that has made any statement that would even lead to an inference that there is such thought in the minds of the Congress or the courts or the executive branch of the Government."

By his statement he was referring to the possibility of sending military units into a state to enforce a decree of the court, and yet, it is reported in the press that this same Attorney General, notwithstanding the statement above made, advised the President to send federal troops to Little Rock.

Senator Hennings of Missouri in this hearing stated in further questioning the Attorney General:

"There is not the slightest suggestion on the part of any responsible public official of bringing in matters of the militia into the Civil Rights area."

That was in February, 1957. The President of the United States was leading the Congress to believe, and the Attorney General of the United States was leading the Congress to believe, and the Senate Committee so understood that nobody claimed that the President had any such right in sending the Army into a state to enforce a decree of the court. Notwithstanding these statements that no authority existed and no one even thought of doing such a thing, the Attorney General and the President on September 11, 1957, contrived to send the Army into Arkansas for the purpose of enforcing a decree of the Court and did in fact enforce the decree by the Army armed with guns and bayonets. We denounce this procedure as unconstitutional, illegal, abusive, and unnecessary.

These statements are made not solely by way of criticism, but they are made as American principles which apply to the people throughout this nation. They are as important to Maine, Connecticut, New York, and Pennsylvania as they are to Virginia, Georgia, Alabama, Arkansas, Mississippi, and Texas. They are principles that apply to all people who would preserve their freedom and their liberty.

REPORT OF THE PUBLIC RELATIONS COMMITTEE

Newspaper articles were prepared by various members of the Committees both of the Junior Bar Section and of the Senior Bar, on the subjects hereinafter listed. These articles were distributed to newspapers throughout the State, under the general heading, YOU AND THE LAW. While we have no way of knowing exactly how many of these articles were run, the spot checks made by us indicate that a large number of newspapers ran all of the articles submitted to them. The titles of these articles are as follows:

"Is Jury Duty Your Duty?"

"Mississippi Income Tax Law"

"Do You Want the State of Mississippi to Make Your Will?"

"What Workmen's Compensation Means to You"

"The Circuit Court; Its Jurisdiction and Functions"

"Guardian and Ward"
"Court Appointment of Counsel for Indigents Accused of Capital Crimes"
"Landlord and Tenant"
"You Promised to Pay"
"The Statute of Limitations"
"Jurisdiction and Function of Federal Courts in Civil Cases"

Outlines for talks were made available for use by the attorneys throughout the State for making talks to service and civic clubs on the following subjects: Wills, Real Estate Titles, Contracts, and The Court and Jury System. By using these outlines, lawyers were enabled to make speeches with a minimum of advance preparation.

Two public relations films are owned by the Mississippi State Bar, and these were available, free of charge, to any local bar association, or to any lawyer for use as a program at a civic or service club. While these films were used to some extent during the year, full utilization was not made of them by the various local groups throughout the State. Both of these films are excellent. The titles of these films and a brief summary of what they depict are as follows:

(a) "Living Under Law", an 18-minute film prepared by the State Bar Association of Michigan, which shows the various aspects of a lawyer's work and its place in the fabric of American life.

(b) "With Benefit of Counsel", a 14½-minute film prepared by the State Bar Association of Texas, which is designed to promote better public relations by showing the lawyer's important role in society.

Co-operation and assistance for the State Bar Public Relations Committee was made available to local bar associations which sponsored radio and television programs during the year.

An article was prepared for inclusion in a "Handbook for Local Bar Associations" which is now in the process of preparation, which article explained to the local bar groups what public relations material and media were available for use by them.

As a result of the work of the Committee, we feel that the general public has become better informed as to the workings of our judicial system in this State and in the Nation, and as to the role and functions of the individual lawyers and of the State and local bar associations.

The following recommendations are made in the hope that public relations work for the coming years will be even more effective than it has been during the past year. We respectfully recommend:

1. That better co-ordination be achieved between the public relations committees of the Mississippi State Bar and the local bar associations throughout the State. The biggest problems encountered in promoting public relations is the actual implementation of the program, and we feel that the best way to lick this problem is by getting the local bar groups to be responsible for carrying out the public relations program in their respective counties.

2. That some substantial amount of money be set aside next year, the budget permitting, solely for public relations work. Due to insufficient State Bar funds, no money was designated for public relations work this year. This could not be helped and was not due to anyone's fault. It appears that the only solution to the problems of adequately financing a good public relations program, as well as other work which should be done by the Mississippi State Bar, is by raising the annual dues of the members, and we understand that this matter is under consideration at the present time.

REPORT OF THE RESOLUTIONS COMMITTEE

I

WHEREAS, the Honorable W. S. Henley, retiring President of this Association, during his term of office has given freely of his time and exceptional talents with the result that the Mississippi State Bar has enjoyed a year of remarkable growth and of service not only to its members but to the public as well, and

WHEREAS, under his leadership and guidance a most interesting, informative, and entertaining program has been presented at this, the 1958 meeting of the Bar, and

WHEREAS, we desire to formally express by resolution, our appreciation of Mr. Henley's service and our gratitude to the men who have participated in this program, many of whom have traveled long distances to be with us,

NOW, THEREFORE, BE IT RESOLVED by the Mississippi State Bar at this its 1958 meeting, as follows:

1. That we extend to Hon. W. S. Henley our appreciation for his devotion to this Association and for his untiring services throughout the year.
2. That we extend to each person who participated in the programs of this Association and of its Junior Section our gratitude and appreciation.

II

WHEREAS, the Commissioners of the Mississippi State Bar on Thursday, May 29, 1958, in regular meeting assembled, unanimously adopted a resolution commending our efficient secretary, Mrs. Alice Nevels, and

WHEREAS, the members of this Association wholeheartedly endorse the action of its Board of Commissioners in this regard:

NOW, THEREFORE, BE IT RESOLVED that the said resolution, copy of which is hereto attached and by reference made a part hereof, be and the same is hereby adopted as a resolution of this association.

III

WHEREAS, our beloved secretary, Mrs. Alice Nevels, has served as Secretary of the Bar from 1932 until 1952 when she answered the call of our country and enlisted in the Woman's Army Corps where she served with the honor and distinction, and

WHEREAS, she was graduated from the Jackson School of Law in 1942 and was admitted to the Bar of Mississippi, and

WHEREAS, she received a B.A. Degree from Millsaps College in 1949, and

WHEREAS, she was honorably discharged from the service and thereafter practiced law and served as Deputy State Tax Collector under Mrs. Thomas L. Bailey until she was again appointed as Secretary of our Bar, and

WHEREAS, she has served continuously as Secretary of our Bar since 1951, and

WHEREAS, she is also a member of the Hinds County Bar and of the American Bar Association, and

WHEREAS, she is a charter member and past president of the Pilot Club of Jackson; a member of the Business and Professional Women's Club; a member of the American Association of University Women; a member and past executive vice-commander of the Henry H. Graves Post No. 1 of the American Legion, and

WHEREAS, she has served our Bar faithfully, loyally, efficiently and well, and

WHEREAS, her charming manner and gracious disposition are well known throughout the length and breadth of our state and even beyond our borders, and

WHEREAS, her devotion and service have meant much to our Bar, and

WHEREAS, we desire to make known to our beloved Secretary our feeling in the premises,

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Mississippi State Bar that we express to our beloved Secretary our appreciation for her loyal service. History does not always record the true greatness of an individual but each member of the Mississippi State Bar recognizes and appreciates her many peerless qualities. We lawyers live in a world of conflict and controversy, but we pause in the midst of our busy day and pay tribute to our beloved secretary who has helped make our Bar nationally known and justly famous. Because of her many services rendered to our Bar, many of which are far beyond her call of duty, we individually and collectively express to her our heartfelt appreciation, love and affection.

IV

WHEREAS, the Junior Bar Section of this Association at its annual meeting on Thursday, May 29, 1958, adopted a resolution calling upon the members of this Association to annually contribute to the Association, in addition to the regular dues, the sum of $15.00 to be used to supplement the income desired from regular dues, a copy of which resolution is hereto attached and by reference made a part hereof, and

WHEREAS, this action meets with the approval of the members of this Association with the exception that it is our opinion that such contribution should be $10.00 instead of $15.00,

NOW, THEREFORE, BE IT RESOLVED that the action of the Junior Bar Section in adopting the said resolution be and the same is hereby approved with the exception above stated, and said resolution as amended is adopted as a resolution of this Association.

V.

At the regular 1958 annual meeting of the Junior Bar Section of the Mississippi State Bar Association, duly assembled, the following resolution was unanimously adopted.

WHEREAS, the activities of the State Bar Association are acutely suffering from lack of funds with which to operate, and

WHEREAS, said programs are in the opinion of the Junior Bar Association extremely worthwhile and necessary for the further advancement of the State Bar Association and will be to the best interest of all citizens of the State of Mississippi, and

WHEREAS, the Bar has ascertained that there is a need both for additional funds with which to operate and for an understanding of such need by the Mississippi Legislature,

NOW, THEREFORE, BE IT RESOLVED:

1. That the members of the State Bar Association be requested to contribute $15.00 each to the State Bar in addition to their regular $10.00 annual dues; said contribution to be made at the time of payment of their regular dues.
2. That the Legislature be petitioned to raise the annual Bar Association dues to $25.00 per year, at the next session of the Legislature.
3. That the Mississippi State Bar be requested to endorse this action of the Junior Bar Section.

VI

WHEREAS, there have been introduced into the Congress of the United States two Bills, namely—H. R. 9 and 10, which said Bills would permit self-employed persons, including lawyers, to contribute to retirement funds for themselves

and their heirs, with income and estate tax treatment similar to that now afforded to qualified retirement plans created by employers for their employees, and

WHEREAS, there are some ten million self-employed in the United States who are not now permitted to build up retirement funds for their old age, with such tax benefits, and

WHEREAS, the adoption of the Jenkins-Keogh Bills, if enacted into law, would add greatly to the volume of private savings at a time when economists are urging Congress to close the inflationary gap between demand for capital and savings, and

WHEREAS, the enactment of the Jenkins-Keogh Bills would serve to accomplish three purposes: (1) stimulate a flow of long term savings to industry, trade and construction by institutional investors to meet pressing expansion and capital demands; (2) these long term savings would act as a real deterrent to inflation; and (3) in accord with the government's considered opinion that tax cuts cannot now, or in the forseeable future, be granted, would remove an acknowledged inequity against one class of citizens—the self-employed—and help equalize an admittedly unequal and unfair tax burden,

NOW THEREFORE, BE IT RESOLVED:

That the members of the Mississippi State Bar arraign themselves wholeheartedly behind this program for the enactment of the Jenkins-Keogh Bills, and that each member show his or her approval of these Bills by immediately contacting each member of the Mississippi Congressional delegation, either personally or by letter or some other appropriate means, and requesting that said Congressional Representatives make every effort to see to the passage of these Bills during the current Session of the Congress of the United States.

VII

WHEREAS, there arises from time to time differences of opinion as to the proper function of Lawyers and that of Certified Public Accountants, and

WHEREAS, it is the desire of this Association that such differences be resolved expediently in such a way as to serve the public interest and the best interest of the two professions,

NOW, THEREFORE, BE IT RESOLVED that the Mississippi State Bar endorse, and approve the Joint Statement of Principle in Regard to Practice in the Field of Taxation promulgated by the Joint Committee of the Professional Relations Committee of the American Bar Association and the Committee on Relations with the Bar of the American Institute of Certified Public Accountants as a guide for Lawyers and Certified Public Accountants in determining the proper function of each in the field of taxation.

Be it further resolved that this association participate with the Mississippi Society of Certified Public Accountants in the formation of a joint committee of Lawyers and Certified Public Accountants to be patterned after and to function along the lines established by the National Conference of Lawyers and Certified Public Accountants, which was formed under the auspices of the Professional Relations Committee of the American Bar Association and the Committee on Cooperation with the Bar of the American Institute of Certified Public Accountants; and that the said Committee shall endeavor to resolve all differences arising between members of the two professions relative to the proper functions of each profession; and that the said Joint Committee shall regularly report its proceedings to the governing bodies of each of the two professional organizations for information and for appropriate action in proper cases.

BE IT FURTHER RESOLVED that the President of this association be authorized and directed to appoint as members to the said Joint Committee of Lawyers and Certified Public Accountants six members of this association who have a special interest in the field of taxation; and that initially two such members be appointed for terms of three years, two for terms of two years, and two for terms of one year; and that after the first year two members be appointed to serve for terms of three years to fill terms then expiring.

VIII

WHEREAS, John C. Satterfield of this state for more than a quarter of a century has practiced law in accordance with the highest traditions of the legal profession, and

WHEREAS, in addition to serving a large and representative clientele, he has given generously of his time and energy in the promotion of the cultural, civic and religious enterprises of his city and state and throughout the entire nation, and

WHEREAS, during his eminently successful career as an attorney, he has been deeply concerned with the improvement of legal ethics and legal education and the better administration of justice, and has always been a stalwart defender of freedom under law and the dignity of man, and

WHEREAS, he has long been actively identified with the bar organization work at the local, state and national levels and has been recognized and singly honored by numerous posts of responsibility in his local and state associations, including the Presidency of the Mississippi State Bar, in which office he supplied progressive leadership of the highest order and brought to the state association a most fruitful administration, and

WHEREAS, he has held numerous posts of high responsibility in the organizations of the legal profession for the past twenty-nine years, including Member of the Board of Governors of the American Bar Association from the Fifth Circuit, State Delegate from Mississippi to the House of Delegates of the American Bar Association, Fellow of the American Bar Foundation, Director of the American Judicature Society, member of the National Conference of Commissioners on Uniform State Laws, the American Counsel Association, the International Association of Insurance Counsel, and a charter member of Scribes (an organization of legal writers), and he has worked faithfully and fruitfully in the ranks of the American Bar Association as Chairman of the Special Committee on Economics of Law Practice, Chairman of the Special Committee upon Amendment of Rule 71-A of the Rules of Federal Pro cedure, member of the Rules and Calendar Committee, the Committee on Jurisprudence and Law Reform, the Special Committee upon Individual Rights as Affected by National Security, the Standing Committee on Resolutions, the Committee on American Citizenship (associate and advisory), Committees of the Board of Governors on Awards to Media of Public Information, and Association Sections and has been an active member of the Sections of Bar Activities, Insurance, Negligence and Compensation Law, Mineral and Natural Resources Law, and

By his character, intelligence and diligent devotion to the high ideals of the legal profession has made and is making a lasting contribution to the profession of law and the organized bar and has achieved a position of leadership in the affairs of the profession throughout the nation:

NOW, THEREFORE, BE IT RESOLVED, that the Mississippi State Bar, in its annual meeting assembled at Biloxi, Mississippi, on this the 31st day of May, 1958, unanimously expresses to John C. Satterfield the abiding affection and highest esteem of its membership and heartily endorses and recommends him for the Pres-

idency of the American Bar Association, as an opportunity to continue his service to our profession and as a fitting climax to his career as a citizen, as a lawyer and as a leader of the organized bar.

IX

WHEREAS, The Mississippi State Bar has for many years visited the Mississippi Coast and has always enjoyed the hospitality of its fine Citizenship in this great section of our State, and

WHEREAS, Jimmie Love, the genial manager of the Buena Vista Hotel has manifested a keen and personal and deep interest in the success of our conventions, and made us feel at home:

NOW, THEREFORE, BE IT RESOLVED, that we, the Members of the Mississippi State Bar, do express our deep appreciation to Jimmie Love and to the members of his fine organization for their many acts of kindness to us while on the Gulf Coast.

REPORT OF THE SUPREME COURT BUILDING COMMITTEE

In the survey conducted by the Professional Economics Committee in 1956 and 1957, it was anticipated that in a new Supreme Court Building located on a suitable plot in the vicinity of the New Capitol Building, the following departments would be housed:

1. Clerk of the Supreme Court.
2. Supreme Court Chamber.
3. Offices of the Justices of the Supreme Court.
4. The State Law Library.
5. The Attorney General's Department.
6. The Headquarters of the Mississippi State Bar.

The committee made a study of the present facilities of each of the above named departments. The findings with respect thereto are set forth hereinafter under the appropriate headings. Consideration was also given to the present inadequate parking facilities afforded for the use of the officials and employees of the above mentioned departments as well as the lack of parking space for those who conduct business in and with the judicial branch of the state government.

This report of the committee will consider the need for more adequate facilities under the appropriate headings.

The Clerk of the Supreme Court is by Article 6, Section 168, of the Mississippi Constitution, a constitutional officer of the State. The duties of the Clerk have been generally defined by the legislature.

The present facilities of the Clerk are in the Supreme Court Chamber and in the east end of the New Capitol Building on the second floor. The present space is woefully inadequate.

During the days of the so-called depression era, the Clerk of the Supreme Court arranged with the W. P. A. for the workers to lay aside their shovels long enough to reclaim approximately 10,000 Court records which had been carelessly thrown into the basement of the New Capitol prior to his entry into office. These records were arranged in order and filed in all available space. As the records continued to accumulate year after year, the problem of what is to be done with the records has reached an acute stage. Records are filed in the lobby of the court room which at best is unsightly and detracts from the dignity of the Court. Shelves and tables in the semi-circle back of and surrounding the court bench are inadequate, antiquated and unsightly.

Certain of the court records are stored in the Department of Archives and History which is in the War Memorial Building. These records are not available for the use of the lawyers except through the Clerk.

There are steel filing cabinets for preserving past minute book, dockets and other important records of the court which are at present in the court chamber. No space is available for the storing and keeping of the exhibits which come to the court, and as a result these also wind up in the court chamber.

The court chamber and other offices are cooled by window units. In the winter time these units are also stored in the court chamber. All of these detract from the beauty and dignity of the court chamber.

The Clerk reports that sufficient space remains for the filing and storing of records for only one more term, and that this space is in the court chamber.

The attention of the committee was called to the fact that the Clerk has been forced to maintain his personal office and desk in the court room. The court chamber is utilized as an office and records room as well as a storage room.

Under the Mississippi Constitution, Section 145B, as amended in 1952, the Supreme Court of Mississippi consists of nine Judges. The Court also employs five secretaries and one porter.

The Judges and their staff occupy and use twelve rooms on the first and second floors of the New Capitol. Also, the courtroom is situated on the east end of the second floor of the New Capitol.

On the first floor are situated offices of three of the Judges, the office of a secretary, and the Supreme Court Conference Room. On the second floor six of the Judges, including the Chief Justice and the Presiding Justice, have offices, and the seventh room on that floor is occupied by four secretaries.

There is no reception room separate from the room occupied by four secretaries on the second floor. There is a need for a separate reception room. The four secretaries and their desks are crowded into a relatively small space, in the same room which is used for visitors having official business. This room is also used for a library for some of the lawbooks of the Judges. This crowded condition in the secretaries' office-reception room makes it difficult to maintain the necessary privacy or secrecy in the preparation and typing of the Court's opinions. The same conditions exist with reference to the secretary's office on the first floor.

There are no private bathroom facilities for the Judges or secretarial staff. Such facilities as are available are public and are located some distance down the corridors of the building.

The offices of seven of the Judges are of adequate size, but two, on the first and second floors respectively, are very small, with hardly enough room for a desk, two chairs and two or three bookcases. All of these offices open on the main halls or corridors of the building, and frequently Judges are interrupted in their work by salesmen, solicitors and by curious persons with no business or matters with the Judges or the Court, who simply open the hall door to the Judges' offices and walk in. As with other modern business offices, the offices of the Judges should not open on a public hallway, but into a reception room. This, of course, would facilitate the work of the Judges, without unnecessary interruptions from those having no business with the Court. The Conference Room is inconveniently located, on the first floor, some distance away from the offices of six of the Judges and the staff. It is not air conditioned, and becomes quite uncomfortable from May through September.

The separation of the Judges' offices on two separate floors creates an inconvenient and inefficient condition with reference to conferences between individual

Judges on matters under consideration by the Court. The separation of the secretarial staff into separate rooms on the first and second floors tends to hinder the efficient use of the full capabilities of the secretarial staff, which operates on a "pool" basis.

The courtroom is of adequate size for hearings by the Court of cases argued before it. However, as the report with reference to the Supreme Court Clerk's facilities shows, there are no adequate and convenient storage facilities for the many exhibits sent up to the Court on appeal. The acoustics in the courtroom are poor. The Bench used by the Judges when originally constructed was made for three Judges, of which the Court then consisted. It is of adequate size for a group of five Judges, but is entirely too small to hold the chairs for nine of the Judges, when the Court is siting en banc.

The volume of litigation before the Court has resulted in a real problem in the adequate filing and storing of records. The Clerk's Office has handled this problem as well as it could be handled with restricted facilities. In the main storage room on the south side of the courtroom, records are filed up to ceiling height, which is about twenty feet, and this results in a dangerous and difficult method of obtaining records when members of the bar desire them. Some of the overflow of records is met by storing them in the corridor and hallway leading into the courtroom. These storage cases cover up the beautiful marble work of this corridor and are unsightly and detract from the dignity of the Court. Many of the records are stored in the basement of the New Capitol, in damp and unprotected conditions, and are in danger of destruction for these reasons. Other records are stored in the Department of Archives. The head of that department, of course, must have some restrictions with reference to the withdrawal and use of these records by members of the bar. The restriction is that the records cannot be withdrawn therefrom except by the Clerk of the Court, and not by a member of the Bar. The storage of these records five or six blocks away from the courtroom and the Clerk's Office results in a considerable inconvenience to members of the bar desiring to examine them, and also results in inefficient filing and unavailability.

The State Law Library is housed in the west end of the New Capitol Building. Although recent improvements have been made within the confines of the area alloted to the library, it is still wholly inadequate to serve the needs.

The present conditions do not permit expansion nor the use of modern machines. Space is not available for providing small private rooms for the use of the judges and lawyers. The two small rooms now available for this purpose are on an upper floor, an inconvenient and inefficient arrangement.

At present the library area is little more than a storage area for the books. Although in terms of law books alone, the State has an excellent law library, the efficient use of it by the lawyers and judges is hampered because of overcrowding and lack of proper space and equipment for research activities.

The office of the Attorney General, the Assistant Attorneys General, and other employees is located on the third floor of the New Capitol Building on the east wing thereof.

The Attorney General is a constitutional judicial office of the State. He is the chief law enforcement officer of the State.

During the past twenty years, the office of the Attorney General has been enlarged through the addition of assistants and secretaries. This became necessary because of the increased duties placed upon this department of the state government. At the present time this office is using space originally designed for and formerly used by the Lt. Governor, and by the Senate for committee rooms. Dis-

pite the acquisition of additional space, the facilities have become and are woefully inadequate.

At the present time all of the secretaries are relegated to one small room with the exception of the secretary to the Attorney General, and the desks of the secretaries are literally jammed together. In the same room most of the filing cabinets required by this office are situated. Additional files have necessarily been placed in the office of the Attorney General. The same is true of bookcases. Other files which should be made readily accessible for reference in this office by the staff have been moved to a storeroom between the third and fourth floors of the New Capitol Building.

Due to the increased work load of the office, it has been necessary to obtain additional assistants and all of the available office space is now being used. As a matter of fact, when the latest appointment of an assistant was made, it was necessary to convert most of the law library into an office for this assistant. With the increased civil rights activities, it is apparent that the office of the Attorney General will need additional assistants to share this work load and as the matter now stands there is absolutely no office space available for said assistants.

It is becoming more apparent with each passing day that it will be necessary for some type of investigative bureau to be set up to assist the county officials in investigating crimes occurring within the respective counties. In view of the fact that the Attorney General is the chief law enforcement officer of the state, no doubt such bureau will operate under the supervision and out of the office of the Attorney General. This being true, additional office facilities must be made available for the Attorney General.

The Mississippi State Bar is a department of the state government. The association was created by legislative enactment in 1932. The office of the secretary is required to be maintained at the State Capitol.

At present the headquarters of the Mississippi State Bar are housed in one room on the ground floor of the east wing of the New Capitol Building. These facilities are wholly and completely inadequate.

The Secretary is charged with the responsibility of attempting to carry out the duties of the Bar in this room barely large enough to maintain even the minimum records required. The present facilities do not permit any semblance of privacy. When anyone desires to talk privately with the Secretary, such conversations must be held in the hall or elsewhere.

There is no assembly room for the officers and commissions. Consequently, it is necessary to hold such meetings in hotels away from the records in the Secretary's office. This is inconvenient and inefficient.

No facilities are available for the holding of Bar Committee meetings. All committee meetings are required to be held in places other than the headquarters of the Bar.

There is no space available for housing the various office machines necessary for the efficient work of the Secretary and the staff. It is necessary to use the equipment of the Secretary of State, which is housed in another part of the building some distance from the one room now provided for the Bar.

Present facilities do not provide supply and storage rooms. Nor do the present facilities provide any space for the work of the various sections of the Bar. Additional offices are needed for research and public relations as well as for manifold programs traditionally undertaken by the Bar for the improvement of the administration of justice.

There are no private bathroom or washroom facilities. The officers and em-

ployees of the Bar are required to use public facilities located in another part of the building some distance from the one room headquarters.

The needs, therefore, of the above mentioned departments of state can be satisfactorily supplied only by the construction of a new Supreme Court or Department of Justice Building.

It is recommended that a building of suitable architectural design be constructed as close to the New Capitol Building as possible, with an adequate parking area restricted to use by those having business in the building or with any other department of the State of Mississippi, on lands to be acquired by the State Building Commission.

It is recommended that the building be of six stories and that on the various floors there be housed the following offices:

1. *First Floor. Clerk of the Supreme Court.*

We recommend that the Clerk's department should be on the first floor and that adequate future storage space in the basement be provided for the use of the Clerk.

2. *Second Floor. Supreme Court Chamber.*

It is recommended that the Supreme Court Chamber be on the second floor. The Chamber should be of modern construction with proper acoustical installa tions and should have comfortable lounges and work rooms for the lawyers as well as comfortable lounges for the Judges.

3. *Third Floor. Supreme Court Judges' Offices and Conference Rooms.*

It is recommended that the private offices of the Supreme Court Judges and two conference rooms for the Judges should be on this floor. Each Judge should be furnished with a suite of three rooms to provide a private office for the individual Judge, a private office for a secretary, and a private office for a law clerk for the individual Judge to accomodate possible future authorization therefor. We believe that each suite should have private lavatory and toilet facilities.

4. *Fourth Floor. State Law Library.*

We suggest that the State Law Library should be located on the fourth floor. This floor should contain adequate provisions for continued expansion of the library, and should also provide sufficient small private rooms for use of lawyers availing themselves of the facilities of the library.

5. *Fifth Floor. Attorney General's Department.*

We believe that the Attorney General's Department should be housed on the fifth floor and should contain adequate private offices for the Attorney General and for his assistants, including room for growth of this department. We suggest further that adequate provision should be made therein for a possible future investigative agency and crime laboratory.

6. *Sixth Floor. Mississippi State Bar Headquarters.*

The Mississippi State Bar Headquarters, including the various sections thereof, should be housed on this floor.

It has been suggested to your committee that even with the release of facilities presently occupied by the Attorney General's Department in the New Capitol, there will still be insufficient committee room space and work space for the members of the Legislature and that an additional floor should be included in this building to provide such spaces. Since it is the purpose generally that the proposed building should house judicial offices of the state government, the question has also been raised as to whether or not it would be appropriate to include therein space for parts of the legislative department.

The planning and execution of a Supreme Court Building, if authorized by the

Legislature, is one of considerable importance. It is desirable, of course, that the building be so designed that it will fulfill the needs intended in the highest degree.

To do this, it is suggested that a special committee to consult with the State Building Commission should be authorized in the legislation to be submitted to the Legislature, and the architect chosen to execute the planning should be required to work closely with this committee.

We suggest that such a committee should include the following:

1. One Judge from the Mississippi Supreme Court, to be appointed by the Chief Justice.
2. The Clerk of the Mississippi Supreme Court.
3. The Librarian of the Mississippi State Law Library.
4. The Attorney General of the State of Mississippi.
5. The President of the Mississippi State Bar.
6. The Secretary of the Mississippi State Bar.
7. The President of the Conference of Local Bar Associations of the Mississippi State Bar.
8. Three lawyers from the state at large, one from each Supreme Court District, to be appointed by the Governor.

The expenses of this committee should be authorized to be borne as a cost of the building.

The committee is greatly indebted to E. L. Malvaney & Associates, Architects and Engineers of Jackson, Mississippi, who have consulted with them and have made valuable suggestions and estimates in connection with the work of the committee.

It is the recommendation of your committee that the building be approximately 42,000 square feet and it is the estimate of your committee that the construction and equipment of such a building will require an expenditure of approximately $1,500,000.00.

In addition to the cost of the construction of the building, there will be the cost of the land acquisition. It is the recommendation of the committee that an entire city block of approximately 300 square feet be purchased for the erection thereof. The committee is advised that property in the approximate vicinity suggested for erection of this building will require a price of approximately $20.00 per front foot. A 300 foot square city block would have a front footage of 1200 feet, which would amount to $24,000.00 for the land, exclusive of buildings therein. Without a specific location being chosen, it is impossible to determine the value of the dwellings which would be located on the property. Your committee, therefore, recommends that the legislation include authorization for the purchase of land and buildings.

The total cost recommended by the committee is $1,750,000.00. The committee further recommends that such cost be borne by a bond issue of the state and repaid over a period of time since this is a capital outlay, and not one for an ordinary expense of the government properly borne from current revenues.

REPORT OF THE TAXATION COMMITTEE

1. The Committee recommends for adoption a resolution dealing with the establishment of a joint committee of Lawyers and Certified Public Accountants. Such a joint committee is now functioning on the national level and it is believed that such a committee would serve the public interest and the best interest of the two professions in this state. There will inevitably arise from time to time differences

between the two professions as to the proper function of each profession, particularly in the field of taxation. It is believed that in most cases such differences can be expediently resolved by such a committee. We have been informed by the officers of the Mississippi Society of Certified Public Accountants that their Society has approved of such joint committee.

2. During the past year the Bar Commissioners, on the recommendation of the Taxation Committee, approved the charter of the Special Liaison Tax Committee of the Southeastern Region. It was my privilege to attend a meeting in Atlanta, Georgia, on May 8, 1958, at which the organization of the Special Liaison Tax Committee of the Southeastern Region was completed. All Bars of the seven states in the Southeastern Region of the Internal Revenue Service have approved the charter with the exception of Alabama, and it is expected that they shall do so in the very near future.

The purpose of such Committee is to provide a forum for the exchange of views of the Tax Committees of the seven member Bars, to provide liaison between members Bars and the Internal Revenue Service on the regional level, to disseminate information to member Bars, and to present the views of the member Bars to the Internal Revenue Service.

It is believed that such committee can have a good influence on the practices and procedures employed by the Internal Revenue Service in administering the Revenue Laws.

COMMITTEE REPORTS — JUNIOR BAR SECTION

REPORT OF ACTIVITIES OF THE JUNIOR BAR CONFERENCE OF AMERICAN BAR

John A. Travis, Jr. represented the Junior Bar Section of the Mississippi State Bar at the annual meeting of the Junior Bar Conference of the ABA held in New York in July of 1957. This meeting preceded the trek to London by the ABA.

John A. Travis, Jr. was appointed Vice-Chairman of the Roster and Affiliation Committee for the 1957-58 fiscal year, and he has Alabama, Florida, Georgia, Mississippi and the District of Columbia under his jurisdiction. The purpose of this committee is to get all local, district and state bar organizations affiliated with the Junior Bar Conference of the ABA. Under the new by-laws of the Junior Bar Conference of the ABA, each state has two votes in the House of Delegates of the Junior Bar Conference of the ABA and one additional vote for all local, district and state bar organizations that are affiliated. It is readily seen the importance of having the local bar organizations affiliated with the Junior Bar Conference of the ABA. The Junior Bar Section of the Mississippi State Bar is affiliated, and the Jackson Junior Bar Association will be affiliated within the next few weeks.

K. Hayes Callicut represented the Junior Bar Section of the Mississippi State Bar at the Executive Committee Meeting of the Junior Bar Conference held in conjunction with the midwinter meeting of the ABA in Atlanta on February 21, 1958. The Junior Bar Conference was primarily concerned with the membership campaign of the ABA to be held in April and May of 1958. This is the greatest undertaking of the Junior Bar Conference in its entire history.

The Junior Bar Conference agreed to donate $5,000.00 to the ABA to help defer the expenses of this campaign. This should be a real bargaining point the next time the Junior Bar Conference goes to the ABA and asks for a raise in its annual budget, as they readily agreed to make this donation out of a very limited budget.

John A Travis, Jr. appointed K. Hayes Callicut State Chairman of the ABA Crash Membership Campaign in which campaign 150 new members are to be raised in Mississippi.

Earl Keyes was appointed Vice-Chairman, and he represented the Junior Bar Section of the Mississippi State Bar at a joint meeting of the 5th and 8th Circuits held in New Orleans on March 15, 1958.

We have reached about fifty percent of our goal. The Committee believes that if we can raise 100 new members in the state for the ABA, the campaign will be very successful. We believe that this can be done.

REPORT OF THE LEGAL AID COMMITTEE

Although there has been some feeling among members of the bar and some study by committees appointed annually at the State Bar Convention that some sort of legal aid program on a state-wide basis be inaugurated, at the present time any organized program of legal aid is carried on through the individual efforts of the local bar associations. During 1957 several counties initiated some sort of organized program for legal aid in addition to the services on an individual basis that lawyers, in keeping with the custom of the past, have rendered, through a feeling of duty to the community to assist the needy.

Legal Aid in Jackson and Hinds County has operated since January 1, 1955, on a part-time basis. The poignant problem with which Legal Aid of Jackson is presently confronted is the lack of finances to more adequately carry out the program in view of the fact that since the program's inauguration some years ago there has been a constant and steady influx of more and more applicants for legal aid, as the program has come to be more well known.

The Board of Trustees of Legal Aid, which organization is a corporation, has voted at a recent meeting to make every effort during the present year to prevail upon the United Givers Fund Organization, which is the present financial source of Legal Aid of Jackson, to substantially contribute to the further expansion of the program, and it is the hope of the Board of Trustees that this may soon be accomplished so that the growing need for enlarged facilities may be met. Legal Aid of Jackson is presently the only legal aid organization which has become a member of the National Legal Aid Association, although several other counties in the State are listed by the National Legal Aid Association as having bar association committees for legal aid study or work. At the present time all applicants for legal aid in the City of Jackson are interviewed in the Legal Aid Office, which office, together with secretarial help, is provided as a public service by the Hinds County Department of Public Welfare, and after determination of the eligibility of the applicant, he is referred to one of some 65 to 75 volunteer lawyers in Jackson and Hinds County who have agreed to handle one to two legal aid cases per year upon referral to them by the Legal Aid Office.

It is the recommendation of the committee that further attempt be made, through the Bar Association in conjunction with the Junior Bar Section, to initiate interest among local bar associations to take action in their own counties during 1958 and subsequently to set up their own legal aid organizations so that this problem may be handled on a more organized basis throughout the state, and thus become available to many of those indigent persons who otherwise would be forced to go wholly without legal assistance in their hour of need. We recommend that the committee of the State Bar Association be authorized to use the facilities of the of-

fices of the State Bar Secretary in order to foster and promote this interest throughout the local bar associations of the state.

REPORT OF THE PUBLIC RELATIONS COMMITTEE

The Public Relations Committee of the Junior Bar Section has worked during the past year in close cooperation with the Public Relations Committee of the Senior Bar and with the Public Relations Committee of the Conference of Local Bar Associations of the Mississippi State Bar, through the Chairmen of these respective committees, Mr. Erskine Wells and Mr. Joel Walker. During the year we have indexed the public information material available through our local bar associations and other sources. Magnetic tape recordings suitable for radio broadcast use by local bar associations are available on the following topics:

Constitutional Government
Criminal Law in Misdemeanor Cases
Personal Injury and Damage Actions
Wills
Laws Pertaining to Minors
Rights of an Accused
Fees of a Lawyer in Estate Matters
Nuisances and Injunctions
Criminal Law and Procedure
Rights of a Landlord
Buying, Selling and Owning a Home

The following films are available locally:

"Living Under Law"
"With Benefit of Counsel"

We have also obtained for bar association use the excellent handbook published by the American Bar Association entitled *Public Relations for Bar Associations.* The American Bar Association has for local bar use a twenty-seven minute film which is ideal for projection on a thirty minute TV spot, entitled "Dedication to Justice." Descriptive material on this last film is available from our local bar association office.

The State Bar of Michigan has furnished a complete set of news releases under a format similar to our "You and the Law" format. We are also on the mailing list for future versions of this publication. The Louisiana Bar Association furnished us with a complete set of pamphlets, some of which were presented at our last general meeting by Mr. Bascomb Tulley of Bogalusa, Louisiana. The committee hopes that the Bar Association will appropriate sufficient funds to enable next year's committee to produce similar pamphlets. Contacts with the State Bar of Texas are recommended to secure from them the organizational background for their Speakers' Bureau, so that a similar program can be set up in Mississippi. This year's committee also recommends that the State Headquarters of the Kiwanis, Rotary, Lions, and similar service clubs, as well as the American Legion and VFW, be advised of the interest of our group in presenting films or furnishing speakers for their programs over the state. This would provide an easy, economical way to get our public relations message to a considerable number of influential citizens in almost every county. A complete set of statements of principles and agreements between the American Bar Association and various non-legal groups such as CPA's, adjustors, realtors, collection agencies and the like have been published in the 1956 reports of the American Bar Association and copies of these statements are available upon

request from the Mississippi State Bar office.

With the cooperation of the State Bar Public Relations Committee, twelve news releases on various subjects under our "You and the Law" format were distributed to 130 newspapers throughout the state, which constitute all of the weekly newspapers published in Mississippi. While no accurate information is available on the amount of use made of the material furnished, best indications are that approxi mately 50% of them were used. Our total cost to secure this excellent coverage was only $297.04, which came from the budgets of both public information committees, but principally from the Senior Bar's budget. This is a worthwhile program and the committee strongly recommends its continuance and expansion next year.

The committee feels that a closer liaison and relationship with active local bar associations will result in the best public relations program for the bar, and the committee accordingly suggests that next year's president consider the appointment of a co-chairman for the Public Relations Committee from each of the three Supreme Court districts, who will be equally charged with the responsibility of conducting the committee's affairs with particular emphasis on cooperation with the local bar associations in their particular district. The conference of local bar associations has indicated a sincere desire to help and cooperate, and maximum use should be made of the help they can give.

If the work of this committee is to assume the proportions and importance it should, additional funds should be made available. The principle need of this committee is an adequate budget which should look toward the time when it would be possible to hire an attorney on a full-time basis to direct the public relations phase of the bar association's work, together with other general bar activities. Voluntary committees from time to time will do helpful and constructive things, but the needs of our bar association indicate the interest of a trained attorney on a full-time basis.

REPORT OF THE YOUNG LAWYERS' SEMINAR COMMITTEE

At a meeting of the Committee and the Junior Bar Executive Committee on August 31, 1957, the substance, organization and conduct of the Seminar were discussed and assignments of subjects for preparation of outlines and their presentation in lecture form were made.

At a subsequent meeting the decision was reached that every effort would be made to hold the first Seminar in Jackson in the latter part of July, 1958, promptly after the State Bar examination had concluded.

On May 3, 1958, a joint meeting of the Executive Committee, this Committee, and the persons assigned subjects was held for the purpose of reviewing the subject outlines and laying definite plans for the Seminar. The Chairman of this Committee reported his progress on making physical arrangements for the first Seminar session. It was decided that only the most recent graduates of the University of Mississippi Law School and successful bar examinees would be eligible to attend the Seminar. Positive plans were made to hold the first Seminar in the second half of July, 1958, in Jackson.

Information, advice and specimen subject outlines were secured from the Florida Junior Bar, which has successfully conducted its Practical Legal Education Institute for three years. This was disseminated among the Committee and persons assigned subjects.

The Chairman has made tentative arrangements with Millsaps College, Jackson, for classrooms and board and lodging facilities. A brochure announcing the

Seminar and providing full information about it is now under consideration.

It is our recommendation that the work of this committee be continued, expanded and accelerated.

JURY TRIAL PRESENTED AT THE CONVENTION

Statement Of The Case By Judge Sidney Mize

This is the case of Mrs. E. W. Sanders, as Administratrix of the Estate of E. W. Sanders, against the Illinois Central Railroad Company, and is a suit for the death of Mr. Sanders. Suit was brought in Copiah County, Mississippi, this accident having happened in Crystal Springs. In a declaration filed by the Administratrix, Mrs. Sanders alleged that E. W. Sanders was killed on February 10, 1955, at the intersection of the railroad and Georgetown Street in the City of Crystal Springs. The railroad at that point runs north and south; the street runs east and west. She complained of the negligence of the Railroad Company in causing the death of Mr. Sanders, (1) In the operation of the train at a rate of speed greater than thirty miles an hour; (2) Failure of the railroad company to give the signals required by law either by blowing a whistle or ringing a bell; and (3) in that it maintained an unusually dangerous crossing at this particular point where Georgetown Street crossed the tracks of the Illinois Central Railroad Company.

The defendant railroad denied each and all of the allegations of negligence and alleged that the death of Mr. Sanders was caused solely by his own negligence in driving on the railroad tracks in front of an approaching train in spite of being warned by an automatic signal system consisting of flashing lights and bells.

The plaintiff responded to the defendant's affirmative plea admitting the existence and operation of automatic signals but denied that the decedent was guilty of negligence and alleged that the defendant's railroad switch yards in the City of Crystal Springs were so constructed that switching operations were frequently conducted both north and south of said crossing at points obscured from the vision of a person using said crossing, by the depot and packing sheds on the railroad right-of-way and by boxcars standing on the switch track which obscured the decedent's vision, and that a person in his position would be led to believe that said signals might be caused by switching operations or the approach of a train from a safe distance, and that under the circumstances decedent was guilty of no negligence in attempting to cross the railroad track on said occasion.

So, gentlemen of the jury, you will see the issue for you to determine here is whether or not the Railroad Company was guilty of any negligence that proximately contributed to the death of Mr. Sanders. Keep in mind that the Railroad runs north and south, the street east and west, and that the deceased was traveling west, having come out of a cafe near the crossing, and the accident happened around daylight, or shortly thereafter.

Argument For The Plaintiff By James A. Dooley

Your Honor please, you gentlemen of the jury: at this time it becomes the privilege of the parties to discuss this matter with you. As you already know, this is an action brought by Mrs. Sanders as Executrix of the Estate of her deceased husband against the Illinois Central Railroad Company. Before getting into the legal principles and the facts concerning or governing the rights and liabilities of these parties, it might be well if we would call your attention to your duty in this particular case.

Now, you happen to be the jury in this case, and it will be for you to decide who is right and who is wrong. And, in making that decision, you will draw inferences from the facts, you will give meaning to the circumstances, you will determine what is or is not probable, what statements made are or are not believable,

and then, using those powers which you have, decide who is right and who is wrong. And, having those vast powers at your disposal, naturally you have an ensuing responsibility which goes with power, and that is to decide the case according to what is right for both plaintiff and defendant.

As I have stated, you are the judges of the facts and, being the judges of the facts, you are naturally interested in the facts. However, in order to intelligently appreciate the facts, it might be well if you and I were to consider for a few moments the legal principles which will govern your decision and consideration of the evidence.

This is what we call a negligence action. Negligence, the Court will tell you, is doing something that a reasonably prudent person would not do, or it is failing to do something that a reasonably prudent person would do, which is what you and I, in our every day talk, call carelessness, and that is the foundation of this lawsuit. We don't charge, and we don't wish to be understood as intimating, that anyone deliberately took this man's life.

The Court will tell you that it was the duty of the defendant to exercise due care. It was the duty of the defendant to exercise due care in the maintenance of the crossing. It was the duty of the defendant to exercise due care in the operation of its train. And there will be some specific laws the Court will refer to in his instructions, and he will tell you that at the time and place in question it was unlawful, against the law, for the train to be operated at a speed in excess of thirty miles per hour; and that if the Railroad operated its train in excess of that speed, it was guilty of negligence. He will tell you about another law, gentlemen, and that second law provides that every train shall be equipped with a bell, and likewise with a whistle or a horn, and one or the other shall be sounded from a point three hundred yards away from the crossing up until the engine passes the crossing; and, if the Railroad Company failed to so act in this case at this time, it was guilty of negligence.

Now, then, with reference to the conduct of the decedent: whatever he did which may have contributed to cause this occurrence is no defense, and you need not take my word for that; listen to his Honor's instructions. Whatever he did to contribute to cause this occurrence is no defense; it is admissible merely to mitigate the damages. And the Court will tell you that you can compare the negligence of the two, and if the defendant was guilty of the greater negligence, then the defendant is guilty.

Now, then, the evidence has been read to you, and I know it has been not easy to follow; but, as I have stated a moment ago, there are two distinct phases of negligence charged here. One goes to the question of the maintenance of the crossing. Did the defendant exercise prudence and due care in the maintenance of this crossing at the intersection of its tracks and Georgetown Street? And, in answering that question, let's you and I consider some facts about which there is no dispute. Ladies and gentlemen—or gentlemen, I should say—you have heard that Georgetown Street ran in an easterly and westerly direction. It was a street sixty feet wide, and it was a very heavily traveled street. Not only was it the principal east and west street in this city, but likewise it was Route 27, Mississippi Route 27, leading from Tylertown to Vicksburg, Mississippi, and this particular exhibit, looking west, gives you a view of that street. Over this particular street three thousand cars per day operate, and the busiest time, according to the uncontradicted evidence, was between the hours of 6:00 and 7:00 A.M., the time at which this accident occurred, when people were apparently enroute to their places of emploment.

To the left, as one goes west, there were located definite obstructions, and these obstructions are well portrayed by the exhibit which you will have with you when you go to your jury room. They demonstrate, as ones goes to the west, first of all, a platform, which is about twenty feet high. This is the platform that I refer to, that would be the direction in which a westbound motorist coming down here would have to look in order to see a southbound train. In addition to that obstruction, which is twenty feet high and leads up near the intersection of the tracks and the roadway, there was the question of whether or not there were boxcars there. There were undisputedly two boxcars there. The best evidence for the defendant was that of its agent, who said they were ninety-six feet from the corner. And various other witnesses, uncontradicted witnesses without any interest, said they were near the crossing from five to twenty feet.

But there is more than that. If you will note, gentlemen of the jury, there are three tracks here. The top track is a house track, and the second track is what is known as the northbound main, and the third track is what is known as the southbound main, and over these tracks fast, heavy trains were operated by the defendant. You will recall that the Panama, one of its fastest passenger trains, was due there at 6:35 that particular morning. There was the southbound freight train, which had passed there approximately at 6:27, or thereabouts, and then there was this long, 88 car, northbound train, which was involved in this accident.

Now what is the significance of putting two trains moving in opposite directions into an intersection at about the same time? Naturally, for the motorist, there is a problem. When the motorist see one train, he is concerned only with that train. And why? Because he cannot see the other train on the far track. There is even more than that insofar as the problem is concerned. The evidence which we shall indicate will demonstrate that after the southbound train had passed, the lights would continue to flash until the last car had crossed Marion Avenue, some four hundred feet beyond the crossing.

Now, then, in addition to that, what about these lights? Gentlemen, insofar as westbound traffic was concerned, the light, the flashing light, was located forty feet from the track. In other words, if one was beyond forty feet and between that area, in that area, when the light commenced, the light or signal would have no meaning for them. Our whole system of driving is predicated upon the proposition that one looks ahead where he is going and not to the rear.

Now on the other hand, on the other side of the tracks, the defendant, as is evident from this photograph, had its light within ten feet of the track. Instead of having it forty feet, or more than three automobiles lengths, away from the track, it had it within ten feet. Now, then, what about this light? As we indicated a moment ago, there was this southbound train, there was this train going to the left, as one looks at this photograph, and until this train crossed Marion Street, until the last car crossed Marion Street, a block south, this particular light would continue in operation. And, naturally, when one would see the train by him, it would appear clear.

In addition thereto, the evidence was that these particular lights would operate on occasion for hours at a time. And why? Because down away from the track towards the depot, which is demonstrated on this particular plat which you will have with you in your jury room, switching movements were done, and whenever there was a switching movement done, this particular crossing light was affected, even though there was no traffic of a railroad character moving over the crossing. In addition to that, there is no evidence whatsoever that this particular light at the northeast corner was operating.

So then, just consider if you will the amount of railroad traffic, the fact that trains were moving there, crossing there at about the same time, high speed passenger trains, and add to that the heavy amount of traffic on Georgetown Avenue, and the fact that the Railroad had sheds so that, as the engineer stated, it was a blind crossing. Add to those facts, the position of the lights, one being forty feet from the rail, another being ten feet; the manner in which those lights operated, namely, being affected whenever there was any switch, or being affected by a southbound train. And then, take those facts, and consider that there were no gates there, there was no watchman there, and ask yourself whether or not the Railroad Company was exercising prudence in the maintenance of that crossing.

But, as I said, there is more to it than that. There is negligence charged in the operation of the speed of the train. With reference to speed—and I am attempting to get along here — with reference to speed, there was positive evidence. The engineer himself didn't know whether he was or was not going above or below thirty miles an hour. In addition to that, you have heard by three witnesses, the fireman, one man at Marion Street, another man at the depot, both of which areas were passed by this northbound train, who estimated the speed to be forty to sixty miles an hour. Remember that, if this train was being operated in excess of thirty miles an hour, it was, under the law, being operated unlawfully. Insofar as the signal is concerned, the defense's only witness, and I refer to the man which you will probably recall as facing east, stated that he made a sudden stop as he was coming along there, not because he heard any whistle, but because he saw the headlight of the train, this northbound train. He heard no whistle, he heard no bell, gentlemen, there are two unlawful acts.

Now, then, with reference to the deceased: he came up to the crossing, he had gotten into his automobile at a point two hundred feet away, east. He drove up to the crossing and he stopped at the usual and customary place, right up at the rails. He was seen looking to the north, apparently looking for the scheduled Panama Limited. He might have looked to the south too, according to the evidence. Then he started out to cross the tracks. When he got first across the house track and then onto the northbound main, he was struck by this northbound train, the engineer of which saw him when he was only fifty feet away because, as the engineer said, it was a blind crossing. What did he do? Did he violate any law? No, he didn't. He didn't speed across the crossing; he drove up there and he stopped. What else should he have done? He was not compelled to get out of his car, look up and down the track, of course. Indeed, the entire picture may be best summarized by these questions. Did the Railroad violate the statute concerning speed? Did the Railroad violate the statute concerning signals? The evidence was that it did. Did the decedent violate any statute? There was no evidence of any violation on his part of any law whatsoever.

Gentlemen of the jury, there is one remarkable feature about this particular case. There was riding in the locomotive cab the fireman and the head brakeman, yet neither of those persons was called by the defendant to testify concerning the facts here, concerning the speed, concerning the signal, concerning the disputed location of the boxcars. And I am going to ask counsel for the defendant to tell you why those two employees were not called to tell you what they knew about this case. And I am going to ask him to tell you whether he wants you to believe that, under the undisputed facts, the Railroad used due prudence in the maintenance of its crossing, due prudence in the maintenance of its train.

As the jury, gentlemen, you decide not only the question of liability, but you likewise decide the question of damages. That is part of your work. And this is a law-

suit which has been brought for a hundred thousand dollars, and that is a lot of money, and it sounds like a lot of money; but I am going to ask you to bear with me very briefly and see what you believe is a just verdict in this case. There are many of you here, eighteen or twenty, I believe. and because of that your judgment is eighteen or twenty times better than that of any person, and that is why we have juries.

Mr. Sanders was a very healthy man on February 10, 1955. He engaged in outdoor sports, he had the stamina of a younger man, he had shortly before been given a check-up and he was found to be in excellent physical condition. He was a man of sober and industrious habits. For the last five years prior to his death, he had earned over $3200.00 each year. In addition thereo, he was a good father and a good husband. And on this particular day his car was struck, knocked 125 feet down the tracks; he was picked up, removed to a hospital. Both legs were broken, his skull was fractured. He had a concussion of the brain, and he had multiple contusions and lacerations. He came to, regained consciousness as it were, and for over two hours he suffered excruciating pain before he finally expired.

Gentlemen, your problem will be to decide what the value of this life was. That will be your problem. And does any one of you know anything more valuable in life than life itself? Our entire society recognizes that. Why? Perhaps none of us can precisely say, but at any rate because each of us is the product of the Creator. Society recognizes it in many ways, I say. If one man takes another's life he must pay with his own. The Army will never allow a soldier to go into an area where his life might be lost, without spending hundreds of thousands of dollars by way of reconnaissance. Even when Amelia Earhart, in her foolish effort to establish a record by flying the ocean alone, was lost, the Government spent thirteen million dollars for one life. All of you know those facts.

Now this, gentlemen of the jury, you will have to decide first of all: the net cash value of the man's life. He was earning over $3,200.00 each year. He had a life expectancy of over 7 years, 7.64 years. And, of course, life expectancy is merely a guide; it is merely what the people who are that age can expect to live, the people 73 who have cancer, and the people 73 who are in perfect health. It is merely an average. And so, under the evidence in this case, it would seem that this man could look forward to more years than the expectancy on the table. And, if he were to continue to work, say for ten more years, wouldn't the net cash value of his life, even if he were to continue to earn that which he had been earning, be over thirty-two or thirty-three thousand dollars? And then, of course, there is pain and suffering, the pain and suffering that he endured. And when we talk about pain and suffering, we are talking about something which each of us fears more than anything else, which each of us fears more even than death itself. You have heard persons in great pain pray for death. You have never heard a person pray for pain, although at death's door. Pain and suffering, they are the blood brothers of death. And so, for two hours, this man lay on a bed of pain and suffering, and that is an element which the law recognizes, and which you as jurors have to recognize here. And would you say that if you were to award, say ten thousand dollars or fifteen thousand dollars for each hour of pain and suffering, it would be too much? Do you know any market place where pain and suffering could be purchased for ten or fifteen thousand dollars per hour? It knows no market place, gentlemen of the jury.

Again, another element which you should consider, is the society, companionship, association and protection of which Mrs. Sanders has been deprived. She was his wife and had been his wife for almost fifty years. And we all know that

there is no closer relationship than man and wife: two souls in one body, they tell us. She had been deprived of his society, his companionship, his protection. She had an expectation of life of about ten years. What do you think the loss of society, companionship, mean to this woman? Of course, it is hard to pick out a definite figure; but where two people have been very close across the years, sharing their problems, their thoughts, one with the other, and suddenly one is taken by the wrong of some third person, the law recognizes that the remaining person shall be compensated, compensated only in what the law knows.

So, gentlemen, when you go to your jury room, figure out first, the net value of this man's life. Then add to that the value of his pain and suffering. Then consider, if you will, the value of the loss of his society, association, protection and companionship to his widow.

Argument For The Defendant By Welcome D. Pierson

Judge Mize, gentlemen of the jury, I, first, would feel that I was not doing the right thing if I didn't thank you men for being here today. I come here a stranger now. I come here with a just cause, as a stranger. I hope that neither my cause nor myself will be a stranger to you men before I complete my remarks or when I have completed my remarks.

I have no quarrel with Mr. Sanders, or anyone else as far as I know. You men, of course, as Mr. Dooley has so well said, will be the ones to decide the facts in this lawsuit, and that is the way our law system is built. You are not here by any haphazard method of chance; you are here because the Board of Supervisors picked you, not somebody else but you that are seated there, as men living in this county who will deal fairly and justly with people who have business in court, and will deal justly with those people whether they be Mr. Sanders or whether they be a railroad, and I feel confident that you will do just that.

And now I want to say to you I would disagree to some extent with Mr. Dooley as to the way you should consider this evidence and as to that part of evidence which is important. Now, first of all, I think he made the remark that you would not need in any way whatsoever to pay any attention to any fault of which Mr. Sanders was guilty. Now I don't believe the Court is going to tell you that when he instructs you, after I get through talking. I think he will tell you that if this accident was caused solely by Mr. Sanders' fault, that his widow is not entitled to recover. I think he will tell you that if it was caused by the fault of both the railroad and Mr. Sanders, that then Mr. Sanders is entitled to recover, but you shall consider his fault and what his negligence was in determining the amount that you would return. I believe that is the law of Mississippi.

Now there has been something said about this crossing. I wonder if for a few brief moments I could call your attention to a little bit of evidence that was offered here by the plaintiff in this case. Sometimes we overlook these little things in lawsuits, but remember, here is the highway engineer who says that there were three thousand cars passing the crossing every day. He was a highway maintenance engineer. He was offered as a witness by the plaintiff in this lawsuit. Don't you think that if there had been anything dangerous about that crossing, that they would have asked him some questions and had him testify about where the danger was? And he was the man hired by the Board of Supervisors of that county to look after those things, and there is no evidence that he found anything wrong with that crossing. Now there is something else about it too: three thousand cars passed that crossing every day, according to his evidence, and there was only, as far as the evidence is concerned, only one struck by a railroad train, and that

was struck because of the fault of Mr. Sanders, the driver of his car, and that is what I want to discuss with you just a little bit here, not in an eloquent way, just visit with you just a little bit about it.

Now the thing you are going only to determine and should determine when you go to your jury room is, whose fault caused this unfortunate accident. That is the thing that you must think about first in the discharge of your duty. And I want to say this, the first witness I want to talk about is a witness whom I know it was a hard and a difficult thing for him to say the things he said in this lawsuit, because he was the coffee drinking buddy of the deceased Sanders. And I want to talk to you a little bit about the testimony of this man Sullivan. You remember, and you will remember when you go to your jury room, that Mr. Sullivan and Mr. Sanders were in the cafe at an early hour of the morning, drinking coffee together. They both left—I believe they both left in trucks—they both drove the same direction, and when they were riding the same direction toward this railroad crossing, Mr. Sullivan testified, "Yes, I saw the southbound train. I saw the train approaching." Mr. Sullivan was looking out for his own safety. He was doing what a citizen should do that approached that crossing. "Yes", he says, "I saw that train approaching. I saw it between the boxcars." Now the plaintiff and some other witnesses here would have you say that those boxcars obstructed vision of people as they were approaching that crossing. Mr. Sullivan says, "I could see that train between those boxcars." What did Mr. Sullivan do? Mr. Sullivan pulled up to that railroad crossing, he saw those signal lights flashing, he knew as a citizen that for his safety he should do what he did do, and that is to stay there until he knew that the railroad crossing was clear. Now that is the witness that they offer in attempt to establish liability against this railroad for the unfortunate death of this man. Now that is Mr. Sullivan, and Mr. Sullivan, may I say to you, exercised that care and caution that a citizen should exercise, that three thousand people exercised at that crossing, and Mr. Sullivan lives today. Now, whose fault was this accident? Whose fault was this accident? Here were those lights flashing, here were the lights that were seen by Sullivan.

Now, let's go just a little bit further, I like to talk to you not about something that might not have happened; I like to talk to juries about facts that witnesses testify to. Now, let's take one other witness who was also an eye witness. Let's take the man who was coming from the other direction. Here is a man by the name of Stokes Lingle. Now he is coming from the other direction. Well, now, he testifies, truthfully of course, that the signal lights on the side that he was coming from were working, and that he saw them flashing. Well, of course, he couldn't say for sure about the lights on the other side of the crossing, because he wasn't going that direction, but the signal lights were working as far as Stokes Lingle was concerned. And not only that, as far as Stokes Lingle was concerned, he could see the train; he said he could. He said he could see the train, and he stopped his car. Now what does he say further? He says further, "I looked across the crossing, while I was doing what I should do as a citizen in protection of my own life, I looked across the crossing, and what do I see? I see Mr. Sanders, I see Mr. Sanders doing that which he should not do for the protection of his own life as a citizen. I saw him after his vehicle was sitting at a place of safety. I saw him deliberately enmesh the gears of his truck and move out in front of the train that I could see." Now those are facts. There is not any guess work about that, and those are the two men that should see this accident when it occurred.

Now, gentlemen of the jury, the only thing I want you to do is to apply those

facts to what the Court will tell you about the law in this case. And I have reason to believe that he will tell you this to be the law and, if he does not, then of course you want to follow what he tells you, but I think he will tell you something like this in just a few minutes. He will say if you believe from the evidence that when Mr. Sanders approached the crossing in question and stopped, the automatic crossing signals were flashing and the gong was ringing, or either, and if you believe from the evidence Mr. Sanders saw or heard same; or, if you believe from the evidence that he, in the exercise of ordinary care, should have seen or heard same, then Mr. Sanders — and get this — had no right to assume that a train was not approaching the crossing; and if you believe from the evidence that while said crossing signals were flashing that Mr. Sanders knew, or in the exercise of ordinary care should have known thereof, he started across the track without ascertaining that the crossing was safe, he was guilty of negligence. Now I think that is what the Court is going to tell you about his conduct.

And I think the Court will tell you something like this: that if Mr. Sanders drove his truck negligently on the tracks, without ascertaining that the way was clear, and that such negligence was the sole cause of his death, then your verdict should be for the defendant. Now say to me, Mr. Dooley, if you will, that the negligence of Sanders should not be considered by this jury here in this good county in determining the rights of these parties. And, of course, those are questions for you to determine.

But he will probably tell you this: if Mr. Sanders with ordinary care and caution should have seen or heard the train on or near the crossing in time to stop his truck — he had it already stopped — and avoid the accident, and he failed to exercise such care to see the train or hear the train, then he was guilty of negligence. And now, wait a minute, what do you do with him if you find him guilty of negligence? And, if you believe such negligence on his part, if there was such negligence, was the sole proximate cause of collision with the train of the crossing, then under the law, and under your oath as jurors, you must return a verdict for the defendant. Under your oath as jurors, and what a fine, wholesome thing that is to think about, your oath as jurors, to do the honest and right thing between people regardless of who they may be.

I think that the Judge will tell you that in the running of trains, that railroad trains must run on tracks and they must run on a certain place, and in a way they have the right-of-way or preference over the traveling public, and that is the reason that they provide these signals that were there that day, to warn the people approaching those intersections. I think the Court will tell you that the law does not require the defendants to use every possible precaution but just to use ordinary care to maintain its tracks and do the right thing to the traveling public; and, if you believe that they did that, then they are not liable in this case. Now those are some of the things I want you men to take to your jury room with you.

I believe the Court will tell you that the burden is on the plaintiff to establish by credible evidence that the death of Sanders was the direct and proximate result of negligence on the part of the defendant, and unless you believe that they have done that, then you shall bring in a verdict for the defendant, regardless of all the other facts in this case. I think that is the law of Mississippi. I think that is the rule by which we try cases. I think those are the rules of common sense. I think those are the rules that govern men in their decisions.

Now, Mr. Dooley has also talked something about this: he talked about the loss of people by deaths. Well, there is not any doubt about that, gentlemen of the jury, that people grieve over the death of a loved one, that people miss them, but, that

is not the issue in this case. That is when we get mixed up with sympathy and emotion and all those things, is where injustices happen in courts. It is when we stay with the facts that are shown by witnesses that the rights of people in this great nation of ours are safe.

Now let's think a little bit about this man. I am quite willing to talk about Mr. Sanders. Unfortunately, he made this bad mistake that day and lost his life, but he was seventy-three years old. Now they talk about the hundred thousand dollars and things like that. Those things to me are just not reasonable to think about. Let's take a man seventy-three years old. That is about the time, at least I hope, when I get to be seventy-three I can quit work. But, anyway, this man would have lived, we will say what the man from the life insurance company said he would live, said he would live seven and a half years. He was making a little over three thousand dollars a year. Well, of course he has to spend some of that money to buy shelter, and food, and clothing for himself. I am just talking every day practical facts to you men, not trying to embellish them or anything like that. I am just talking real common horse sense to you or trying to. Now he certainly would have to spend part of that three thousand dollars he made in a year to buy overalls, or buy a little tobacco and a little food, so she couldn't even expect to get even that entire three thousand dollars for seven and a half years; she couldn't entirely get three thousand dollars, all of it, because a man is entitled to have just a little bit for himself. But if he did go ahead and make that three thousand dollars, it is kind of hard to think a man seventy-three making three thousand dollars. If he had been making it five years, he would be past eighty. Some men will do that. But even if you think about that, his entire earnings would be around twenty-one thousand dollars, and if he used, say one-third of that for himself, what would be left would be fourteen thousand, wouldn't it? Now that is the way I figure it out anyway, but we are not at that place.

Now, we are not quite through with that story. Even if you find the railroad was partly at fault, and you think that Mr. Sanders was at fault, you have to take off that amount from any recovery, the Court will instruct you that you have to take off that whatever you want to think of his own negligence and what he did as far as the accident was concerned that caused it. Now, you start to taking off of that, and you get it down to a smaller figure, a little smaller anyway, than a hundred thousand dollars. I think you get it down to about one-tenth or one twenty-fifth of it.

Now, of course this man — I don't mean to speak unkindly of him at all — as far as I know he did go to Sunday School, he did teach a Sunday School class, and he was probably a fine husband and a fine father. But I tell you when you get down to talking about money like business men, you have to figure this thing about what a man would actually earn had he lived the seven and a half years of his life expectancy, and how much this woman could have expected to receive, and how much you are going to take off because of this man's own negligence.

Now, in closing, let me say this: I don't want to do anybody any unkindness. All I want is justice. That is what every one in this nation is entitled to receive. That is what you are anxious to do as the chosen citizens, to do just that thing. All right, remember Sullivan. Sullivan looked out for his own safety. Sullivan is alive today. Sanders could have done the same, but he didn't, and unfortunately lost his life. Lingel is alive today, and he was in the same position that Sanders was. I say to you, in conclusion, this is for you, citizens sworn to follow the law and do justice under the facts in every case, regardless of who the people may be; and, in conclusion, I say to you I know I can depend on you men doing your duty in that regard.

Reply For The Plaintiff By James A. Dooley

Your Honor please, and counsel, gentlemen of the jury: do you want to decide this case on what might have been, on possibilities, on probabilities, on matters, foreign to this lawsuit? You are told first of all that none of the three thousand other cars had an accident. Well, naturally there were not three thousand other cars there, and we are not trying the case of missing cars. That was introduced to show the character of the roadway.

Then you were told that Lingel and Sullivan are alive. Lingel, the defendant's only witness, testified that he only stopped, and made a sudden stop, because he saw the headlight on the train. Sullivan said that from the position Sanders was in, a couple of hundred feet west of him, Sanders could not see the oncoming train; and that he, further back, a couple hundred feet east, could see beyond the reaches of the buildings.

Gentlemen, so long as the Railroad Company was guilty of one iota of negligence, whatever the operator of the car did is no defense. They didn't tell you, did they, how they happened to cover thirty-one miles in forty-three minutes, for an average of forty-five miles an hour? They didn't answer any of the facts. They didn't tell you why they had those buildings in that position. They didn't tell you why they had trains crossing one or the other at approximately the same time. They didn't tell you why they had the lights in different positions, one ten feet, the other forty feet. They didn't tell you why they allowed the lights to be operated by switching movements, which had nothing to do with traffic over the crossing. They didn't tell you why they didn't produce their other employees. They didn't answer any uncontradicted or undisputed facts. You were treated to merely an essay in criticism, and remember, gentlemen, that criticism has been the cheapest product in any market place in the history of the world.

One more thought and you will be delivered from me. When you go to your jury room, each of you will be a judge, and you will possess a certain function, and exercise that function perhaps the only time in your life. And when you go to that jury room, do justice according to Mr. Sanders' estate and according to the Railroad Company. And say some prayer in your own heart that you might be aided in doing that which is right and just under the undisputed evidence and under the law in this case. Thank you.

(The Jury returned a verdict for the plaintiff in the sum of $43,500.00).

APPENDIX B

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Harry L. Corban
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R. L. Nichols
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W. L. Elledge
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Walker Jean Carney, Jr.
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Amite Co. Bank Bldg.

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Weinberg Bldg.
Roy D. Campbell
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Holland O. Felts
Box 298
William C. Keady
Box 663
Jerome S. Hafter
429 Weinberg Bldg.
Fountain D. Dawson
Box 2951
Albert Dickens, Jr.
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Howard Dyer, Jr.
326 Weinberg Bldg.
Emmet Harty
205-08 Weinberg Bldg.
George L. Cottingham, Jr.
Box 655
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Box 168
Ernest Kellner
May Bldg.
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Raymond V. Kimble, Jr.
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J. A. Lake, Jr.
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Robert Hart Lake, Jr.
124 S. Poplar St.

Robert T. Love
Drawer 650
Philip Mansour
Woolworth Bldg.
Burrell Otho McGee
527 Central
W. M. McGough
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S. Ira Pittman, Jr.
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Laurance J. Sievers
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Roger Lewis Tuttle
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903 Grand Blvd.
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J. G. Colson
Box 364
William Lamar Colson
1103 Strong Ave.
Charles Milton Deaton
Market St.
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Box 411
E. Louis Fondren, Jr.
Box 85
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Courthouse
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Old Bank of Leflore Bldg.
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810 Grand Blvd.
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c/o Staple Cotton Discount
Corp.
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Mitchell M. Lundy
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504 Hewes Bldg.
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Gulf Nat'l Bk. Bldg.
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Bruce C. Aultman
411 Carter Bldg.
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Irvin H. Buchalter
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Frank Wilson Buckley
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Mississippi Southern
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Geiger Bldg
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First State Bk. Bldg.

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Woodrow Wilson Brand, Jr.
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432 S. Jackson St.
A. E. Hawkins
C. H. McCraine, Jr.
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A. B. Clark
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Arthur B. Clark, Jr.
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H. Chalmers Alexander
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Julian P. Alexander, Jr.
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William P. Alexander
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Mrs. Cecile Cambre Alford
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Box 1818
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Ross R. Barnett
414½ E. Capitol
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Stephen L. Beach, Jr.
Box 663
Loyd Lamar Beacham, Jr.
922 Plaza Bldg.
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Box 663
James A. Becker, Jr.
Box 650
John A. Bellan, Jr.
Box 3035
Roy A. Bennett
301 N. President
William H. Bennett, Jr.
Box 4073, W. Jxn.
Walter Berry
c/o Cabell Electric Co.
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Louis S. Bills, Jr.
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111 Road of Remembrance
Harmon W. Broom
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5835 Canton Park Dr.
M. P. Bouslog
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1007 Dep. Gty. Bank Bldg.
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Hanging Moss Road
Neal Clement
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Percy Clifton
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Wade H. Creekmore
Public Service Commission
1105 Woolfolk Bldg.
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431 Tombigbee, Court
Square
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311 Dep. Gty. Bk. Bldg.
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Square
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236 Mount Vernon
R. R. Dinsmore
Veterans Administration
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E. Ray Edwards
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New Capitol
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Goldie Jane Feldman
900 Lamar Life Bldg.
Bethel Ferguson
c/o Miss. Power & Light
Co.
Grey Flowers
Box 2022
Henry Grady Flowers
Box 609
William B. Fontaine
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Lawrence C. Franklin
930 Milner Bldg.
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Thomas B. Gambrell
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D. A. Gill
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Court
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Charles M. Gordon
1219 Deposit Guaranty
Bank Bldg.
Luther E. Gordon
1070 Buckley Dr.
William F. Goodman
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Weaver E. Gore, Jr.
Box 186
W. E. Gore
Box 186
Robert S. Graham
Box 1841
R. Gordon Grantham
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Charles L. Graves
101½ E. Griffith
Mrs. Elizabeth W. Grayson
Plaza Bldg.
John E. Gregg
100 East Pearl Bldg.
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Box 1666
Garner W. Green
Box 1666
Joshua Green
Box 1666
J. R. Griffin
Ass't. Atty. General
New Capitol
John M. Grower
Box 1213

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Box 3035
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209 Wilshire Dr.
Carsie Hall
538½ N. Farish St.
Judge Lee D. Hall
Asso. Justice Supreme Court
New Capitol
George S. Hamilton
Rt. 3, Box 215
Lowell D. Hamilton
Box 899
Richard B. Hamilton
620 Milner Bldg.
Robert B. Hamilton
Box 444
W. Jeff Hamm
Box 4567
Samuel C. Hardage
735 Roseneath St.
James Elbert Hardin
4116 Council Circle
A. Y. Harper
Box 1545
Charles E. Harper
Box 3035, West Jackson
Matthew Harper
Ass't. Atty. General
New Capitol
W. R. Harris
Box 3035
Robert W. Hartford
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Robert E. Hauberg
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Ben Hawkins
Box 4714
Jay Homer Hedgepeth
Box 1467
T. H. Hedgepeth
Box 1467
Cecil F. Heidelberg, Jr.
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Judge Leon F. Hendrick
Box 1473
Charles B. Henley
Box 326
George P. Hewes, III
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J. T. Hill
1363 Belvoir
Clarence H. Holland
Box 53
Edwin R. Holmes, Jr.
Box 2091
Judge James G. Holmes
Asso. Justice Supreme Court
New Capitol
Hugh Sam Hopkins
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Frank C. Horton
Box 1084
Judge W. T. Horton
1001 Monroe St.
James R. Houston
Box 945
Homer Lee Howie
161 E. Pearl St.
Joseph H. Howie
Box 724
Theodore G. Huffman
513 Launcelot Rd.
Joe Jack Hurst
Box 158
Harvey H. Hutchins
3622 Terry Rd.
Cecil E. Inman
Plaza Bldg.
Cecil E. Inman, Jr.
Plaza Bldg.
Forrest B. Jackson
Box 124
Paul L. James
Box 1941
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1012 First Nat'l. Bank Bldg.
Walter R. Johnson
Box 1818
Barrett Jones
Box 1697
Bernard M. Jones
Box 8566, Station D
P. Z. Jones
414½ E. Capitol St.
W. Roger Jones
Box 326
Mrs. Shirley N. Jones
Box 427
Thomas Richmond Jones, Jr.
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James E. Kemp
Box 651
Henry M. Kendall
Box 330
James T. Kendall
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Thomas I. Kent
Box 159
Earl Keyes
Box 1261
Frank C. Kimbrell
608 Plaza Bldg.
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202 Baptist Book Store Bldg.
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203 First National Bldg.
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Quitman Ross
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Box 475
Pershing B. Sullivan
Box 1105
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Raymond C. Swartzfager
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H. H. Johnson
P. P. Lindholm
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D. T. Ruff
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J. Hoy Hathorn
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Neal Prisock
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Judge J. Ray Gipson
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Box 711
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Box 262
Thomas K. Green, Jr.
Box 262
Lucien C. Gwin
Box 375
G. Stuart Handy, Jr.
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Forrest A. Johnson
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Robert D. Kuehnle
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John Ernest Mulhearn
116 S. Pearl St.
Clyde W. Mullins
319 Main St.
Robert L. Netterville
200 Natchez Times Bldg.
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E. H. Ratcliff
William F. Riley
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William Marion Smith
Laub, Adams, Forman
& Truly
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319 Main St.
Edwin C. Ward
Box 599
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Dwayne L. Hale
Baxter N. Knox
Box 336
W. L. McDonough
Bankhead Bldg.
Edgar J. Stephens, Jr.
Union Lmbr. Co. Bldg.
Lester F. Sumners
Box 123

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Box 167

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D. M. Anderson
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Schuyler Poitevent, Jr.

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George Bean
H. L. Morrison
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Box 191
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